

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT DIVISION**

KAREN FRANKLIN, as Personal  
Representative of the ESTATE OF  
KEITH FRANKLIN, Deceased,

Plaintiff,

v.

STATE OF MICHIGAN, et al.,

Defendants.

Case No: 2:16-cv-13587

Hon. Laurie J. Michelson

Magistrate Judge: David R. Grand

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1	UNITED STATES DISTRICT COURT		
2	EASTERN DISTRICT OF MICHIGAN		
	SOUTHERN DIVISION		
3			
4	KAREN FRANKLIN, as	)	
5	Personal Representative of	)	
6	the ESTATE OF KEITH	)	
7	FRANKLIN, Deceased,	)	
8		)	
9	Plaintiff,	)	
10		)	
11	-v-	)	Cause No. 2:16-CV-13587
12		)	
13	STATE OF MICHIGAN, et al.,	)	
14		)	
15	Defendants.	)	

12           The deposition upon oral examination of  
13 RANDALL STOLTZ, M.D., a witness produced and sworn  
14 before me, Elizabeth A. Taylor, RPR, a Notary Public  
15 in and for the County of Vanderburgh, State of  
16 Indiana, taken on behalf of the Plaintiff at the  
17 offices of Stewart Richardson & Associates, 915 Main  
18 Street, Suite 405, Evansville, Indiana, on July 19,  
19 2018, at 12:00 p.m., pursuant to the Federal Rules of  
20 Civil Procedure.

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1 RANDALL STOLTZ, M.D.,  
2 called as a witness by the Plaintiff, having been first  
3 duly sworn, was examined and testified as follows:

4 EXAMINATION

5 QUESTIONS BY MS. STAMLER

6 Q Would you kindly state your full name for the  
7 record, sir?

8 A Yes. Randall, R-a-n-d-a-l-l, S-t-o-l-t-z.

9 Q And Dr. Stoltz, you are a medical doctor; is that  
10 correct?

11 A Correct.

12 Q You also have the initials of CCHP after your  
13 medical doctor initials. What does that stand for,  
14 sir?

15 A Certified Correctional Health Professional.

16 Q And how long have you held that certification?

17 A I would have to go and look back in my records to  
18 know when I took that test. I don't remember  
19 exactly the dates. For a good while.

20 Q Can you give me a time frame? Ten years?

21 A I'm guessing approximately ten years.

22 Q All right. Dr. Stoltz, I understand you've had  
23 your deposition taken before, but I want to go over  
24 some ground rules for the deposition today. Okay?

25 A Yes.

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1 Q And this is a challenge since we're doing it by  
2 telephone. So I appreciate the -- a bit of a  
3 difficulty that we're going to encounter but bear  
4 with me. It is important that you let me finish my  
5 question before you begin to answer so that our  
6 court reporter can take down your testimony and my  
7 question clearly. Do you understand that?

8 A Yes.

9 Q If I pose a question to you that you do not  
10 understand, please let me know and I will do my  
11 best to clarify it for you. Do you understand  
12 that?

13 A Yes.

14 Q If I ask a question and you answer it, I will  
15 assume that you've understood it as asked. Is that  
16 understood?

17 A Yes.

18 Q And finally, although you're permitted to take a  
19 break when you need one, you cannot do so when a  
20 question is pending. Do you understand that?

21 A Yes.

22 Q All right. You have produced as part of your  
23 expert report in this case a curriculum vitae that  
24 has an address of 839 Greengate Court, Evansville,  
25 Indiana. Is that your home or business address?

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1 A Home.

2 Q Pardon?

3 A Home address.

4 Q You are currently employed as the medical director  
5 for Vanderburgh County Detention Center; is that  
6 correct?

7 A I'm an independent contractor. I work for them,  
8 yes.

9 Q And how long -- is it correct that you've been an  
10 independent contractor there since 1998?

11 A That's correct.

12 Q And on a weekly basis, how many hours do you devote  
13 to your medical director work at the county  
14 detention center?

15 A Approximately 15 hours.

16 Q And do you go onsite for that work or are you  
17 working remotely?

18 A On site.

19 Q And you are in that position developing and  
20 implementing health care plans for inmates; is that  
21 correct?

22 A Yes.

23 Q Do you do anything else in that position?

24 A Well, I educate nurses. Typical -- get involved --  
25 if there's CQI, continuous quality improvement,

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1 initiatives. I look at protocols. I mean, there's  
2 numerous things as the physician I do.

3 Q All right. It is fair to say that in your capacity  
4 as the medical director, you are not providing  
5 direct care for the inmates at the Vanderburgh  
6 County Detention Center; is that right --

7 A I do provide direct patient care.

8 Q All right. So out of the 15 hours that you spend  
9 there on a weekly basis, how much of that time is  
10 devoted to direct patient care?

11 A Fourteen.

12 Q Fourteen?

13 A Yes.

14 Q And the balance would be in the domain of educating  
15 or other administrative work?

16 A Correct.

17 Q Can you give me a size of the inmate census at the  
18 county detention center?

19 A You broke up a little bit there. You want to know  
20 the number of inmates there?

21 Q Correct. Not specifically but generally.

22 A In the range of 500 to 700.

23 Q And how many physicians are on staff there?

24 A Two.

25 Q And that would include you?

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1 A Yes.

2 Q How many nurse practitioners?

3 A Zero.

4 Q Are there any physician assistants?

5 A No.

6 Q What about nursing staff?

7 A There's full-time 24-hour coverage nursing staff.

8 Q Say that again.

9 A There is full-time 24-hour nursing staff coverage.

10 Q And how many nurses?

11 A I don't know the exact number.

12 Q And do you supervise those nurses?

13 A No.

14 Q Who does?

15 A There's a director of nursing.

16 Q Do you supervise the director of nursing?

17 A No.

18 Q Do you have any supervision role in the Vanderburgh

19 County Detention Center?

20 A Not directly where anyone -- no one reports

21 directly to me.

22 Q The inmates that are housed at this detention

23 center, are they there short-term or long-term or a

24 combination of the two?

25 A Combination of the two.

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1 Q What's the longest typical sentence of an inmate at  
2 the detention center, if you know?

3 A I don't know for sure. I know we see inmates there  
4 for a year or two at times.

5 Q So they're typically for a year or two at most; is  
6 that right?

7 A Typically.

8 Q And would it be fair to say that the vast majority  
9 of those inmates are there far less than a year?

10 A That's correct.

11 Q Of the inmates that you've treated in, say, the  
12 last four years, have you had occasion to treat  
13 inmates at the detention center with tonsillar  
14 cancer?

15 A I do not believe so.

16 Q You are also employed at other facilities; is that  
17 correct?

18 A Correct.

19 Q Where else are you currently working?

20 A At the Warrick County Detention Center.

21 Q Is that the place that is located in Boonville,  
22 Indiana?

23 A Yes.

24 Q And how many hours a week do you devote to your  
25 work there?

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1 A Approximately three to four.

2 Q And are you likewise an independent contractor  
3 there as you are at the Vanderburgh County  
4 Detention Center?

5 A Yes.

6 Q And are you providing direct patient care at  
7 Warrick or not?

8 A Yes.

9 Q Do you do anything beyond direct patient care?

10 A Not really.

11 Q And you're the medical director in that position as  
12 well?

13 A Yes.

14 Q Do you supervise any staff at Warrick?

15 A No.

16 Q Is the Warrick prison population similar to the  
17 population at Vanderburgh?

18 A No.

19 Q All right. Is this a more long-term facility?

20 A No. It's a county jail. Short-term.

21 Q And the length of stay at the county jail is  
22 typically a year or less?

23 A Yes.

24 Q And it'd be fair to say that the vast majority of  
25 the inmates at Warrick are there for far under a

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1 year; is that right?

2 A Yes.

3 Q In the last four years have you treated any inmates  
4 at Warrick who have tonsillar cancer?

5 A Not that I recall.

6 Q You also are currently employed at the Indiana  
7 University School of Medicine, but I believe it is  
8 as a volunteer faculty member; is that right?

9 A That's correct.

10 Q So you're not receiving any remuneration from the  
11 university; correct?

12 A Correct.

13 Q All right. We'll get into that a little bit more  
14 in terms of what you're actually doing there in a  
15 moment. Any other current places of employment  
16 that we have not yet covered?

17 A Not of employment, no.

18 Q What else are you doing for income?

19 A I work with the National Commission on Correctional  
20 Health Care.

21 Q Is that a paid position?

22 A It's paid on a per work -- I do when I go out and  
23 do audits or surveys of jails and prisons.

24 Q All right. So if I understand your testimony, you  
25 are paid for your survey work associated with

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1 visiting various correctional facilities; is that  
2 correct?

3 A Yes.

4 Q And how frequently are you surveying correctional  
5 institutions?

6 A It varies from month to month. Basically, I get to  
7 pick and choose when I want to do that. Recently  
8 I've been going out two or three times a month.

9 Q So I want to make sure I hear you right because  
10 it's a little bit foggy. You're going to  
11 facilities two to three times a month to do survey  
12 work?

13 A Most recently, yes.

14 Q And when did that kind of frequency begin?

15 A This year.

16 Q Beginning in 2018?

17 A Correct.

18 Q Prior to that, what was your schedule as far as  
19 survey work?

20 A I would go out maybe once -- on average maybe once  
21 a month, sometimes less.

22 Q And of the facilities that you were doing survey  
23 work for, were these prisons, county jails, or  
24 detention centers?

25 A All of the above.

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1 Q All right. And with regard to the survey work that  
2 you're performing for the National Commission on  
3 Correctional Health Care, are you doing that in  
4 regard to the medical services that are being  
5 rendered for inmates?

6 A Yes.

7 Q Have you ever had occasion to do a survey of any of  
8 the Michigan prisons?

9 A No.

10 Q So it's fair to say you don't have any personal  
11 information regarding the intake center at the RGC  
12 in Jackson, Michigan, by way of example; is that  
13 correct?

14 A That's correct.

15 Q Nor do you have any personal information regarding  
16 the Carson City Correctional Facility; is that  
17 right?

18 A Correct.

19 Q Nor do you have any personal information regarding  
20 the Dwayne Waters Hospital entity; correct?

21 A Correct.

22 Q Have you ever been consulted by the state of  
23 Michigan regarding any sort of lawsuits that were  
24 brought against it or its facilities regarding  
25 medical health care prior to this lawsuit?

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1 MR. McQUILLAN: I'm going to place an  
2 objection to the extent that your question asks for  
3 information that may violate the attorney-client  
4 privilege and the attorney work product doctrine.  
5 But if you've had any discussion with -- if you've  
6 had a discussion --

7 Q I'm not asking for -- yeah. I'm not asking for any  
8 information you may have discussed with counsel as  
9 it relates to being a consulting expert, but I'm  
10 really sort of interested in whether you've had any  
11 experience working for the state of Michigan  
12 regarding its facilities.

13 MR. McQUILLAN: If you've done that, you can  
14 answer that question, but if you've ever talked to  
15 any Attorney General lawyers or any other lawyers  
16 that's responsive to that question, I'm instructing  
17 you not to reveal conversations you've had with  
18 attorneys.

19 A I have been involved in a case, yes.

20 Q All right. What case or cases were you involved  
21 in?

22 A I don't recall the case or anything about it  
23 offhand right now.

24 Q Did you as a part of your work on that case  
25 actually go to the facility at issue?

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1 A No.

2 Q And are you familiar, sir, with the consent decree  
3 called the habis, h-a-b-i-s, consent decree. Is  
4 that familiar to you?

5 A I've heard of it. I don't know really information  
6 or details about it.

7 Q And do you recall how you heard about it? I don't  
8 want to know if you heard about it from a lawyer,  
9 but did you read about it in some publication that  
10 you would be reading about with regard to  
11 correctional medicine?

12 A Not that I recall.

13 Q Do you know, sir, as you sit there today, whether  
14 the habis consent decree applies to any of the  
15 prisons within Michigan?

16 MR. McQUILLAN: I'm going to object to the  
17 form and foundation to the extent it calls for a  
18 legal conclusion. You can answer if you know.

19 Q Go ahead and answer.

20 A I do not know the details.

21 Q Okay. Any other current employment that you are  
22 engaged in beyond what you've testified to?

23 A Not presently.

24 Q All right. You also serve as an expert witness; is  
25 that right?

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1 A I have.

2 Q And how much of your annual income, and I'm not  
3 asking necessarily for dollar amount but a  
4 percentage if you're able to do so, do you earn  
5 from expert work?

6 A Approximately 10 percent.

7 Q And is it fair to say, Doctor, that you are  
8 typically, if not exclusively, hired by the defense  
9 in these types of cases?

10 A That is correct.

11 Q Have you ever served as an expert witness for a  
12 plaintiff in a case that the plaintiff is against  
13 the correctional institute or its physician?

14 A No.

15 MR. McQUILLAN: Form and foundation.

16 Q I'm sorry. Did you answer no to that question?

17 A No.

18 Q How many times, Dr. Stoltz, have you been retained  
19 as an expert by the law firm of Chapman Law Group?

20 MR. McQUILLAN: Objection. That's privileged.

21 MS. STAMLER: No, it's actually not.

22 A I don't recall the exact number.

23 Q Is it more than ten?

24 A I'm not sure.

25 Q Is it between five and ten to the best of your

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1 memory?

2 A It's possible.

3 Q Have you ever been retained by the entity known as  
4 Corizon or Correctional Medical Services as an  
5 expert?

6 A Not directly by them, no.

7 Q Okay. That would have been through counsel?

8 A Correct.

9 Q Is that a yes?

10 A Yes.

11 Q Okay. Have you served as an expert for both  
12 Corizon and Correctional Medicine Services?

13 A I believe so.

14 Q Now, in addition to the testimony you've given to  
15 me regarding your current employment, you have  
16 produced, as we've discussed earlier, a previous  
17 part of your report in this case; is that right?

18 A Yes.

19 Q In preparation for your deposition, did you review  
20 any documents, Doctor?

21 A Yes.

22 Q What did you review?

23 A It's actually in my expert report, the documents I  
24 reviewed to make my report.

25 MR. McQUILLAN: Well, now, she's asking a

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1 slightly different question. She's asking about  
2 things you looked at prior to today to prepare for  
3 this deposition. Obviously, you've documented in  
4 your report what you reviewed to prepare that.

5 Q My question was quite simple. I want to know what  
6 documents, if any, you reviewed in preparation for  
7 your deposition.

8 A Okay. Well, I reviewed my report again. In  
9 addition, I went back and looked at some of the  
10 information, other depositions and things in the  
11 report briefly, and I looked at some affidavits I  
12 was provided with yesterday as well as an expert  
13 report from Dr. Mathis.

14 Q All right. Let me make sure I heard your testimony  
15 because I think there was a pause in between. You  
16 reviewed your report; you looked at some of the  
17 deposition transcripts; you looked at affidavits  
18 that were provided to you yesterday, and you said  
19 you read Dr. Mathis' report?

20 A Deposition.

21 Q Deposition. Okay. Of the depositions -- the other  
22 depositions you looked at, which ones did you  
23 review?

24 A I looked over some of Dr. Bhavsar, Dr. Bomber, and  
25 Dr. Carrel, and Holmes.

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1 Q And what affidavits were provided to you yesterday  
2 that you reviewed that you had not previously  
3 reviewed?

4 A I have to look on my e-mails. I don't have those  
5 printed out.

6 Q Okay. Go ahead.

7 A One is from Dr. Coleman, Pappendick, Bergman, and  
8 Lacey.

9 Q All right. And then you said you read Dr. Mathis'  
10 deposition. Had you read Dr. Mathis' report prior  
11 to your deposition?

12 A I have in the past. I did not review it last  
13 night.

14 Q I'm sorry. You read it last night?

15 A No. I did not reread it again last night. I have  
16 in the past.

17 Q Okay. Thank you. Having reviewed the affidavits  
18 that were provided to you yesterday, did that in  
19 any way alter your opinions that are set forth in  
20 your report?

21 A No.

22 Q Do you have any opinions that you have rendered  
23 that are not in your report?

24 A I could revise a report and make comments on  
25 Dr. Mathis' deposition, if need be. I would change

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1 some information.

2 Q I'm not sure I understood your answer. Did you say  
3 that you would go back and change your report?

4 A I said I could report my report based on some  
5 information from Dr. -- make comments on  
6 information from Dr. Mathis' deposition.

7 Q Other than that, is there anything else that you  
8 would change in your report?

9 A I would -- based on the affidavits provided, I  
10 guess I would probably add in my report that it  
11 does confirm my information that there was no  
12 intentional disregard for Mr. Franklin's care and  
13 expeditious care of his -- care from the  
14 physician's standpoint at the prison.

15 Q That's an opinion you held before you read those  
16 affidavits; is that correct?

17 A Correct.

18 Q What specific things in your report would you  
19 change based on Dr. Mathis' deposition?

20 A It would not change my overall opinion. I would  
21 just add comments in regards to his opinions.

22 Q Okay. And I'm asking you what would you add.

23 A That may take me a couple hours here if I had --  
24 I'd have to go back and re-review, make notes,  
25 comments, to determine exactly the wording I would

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1 want to place.

2 Q So you're not able to do that as you are sitting  
3 there today; is that right?

4 MR. McQUILLAN: Objection mischaracterizes his  
5 testimony. He didn't say he couldn't. He just  
6 said he needed more time.

7 Q I understand you can't do that right now; is that  
8 correct?

9 A I could do that if you want to wait a few hours.

10 Q Well, we don't have a few hours to wait. When did  
11 you get Dr. Mathis' deposition transcript.

12 A Yesterday.

13 Q Have you in the course of your work, Doctor,  
14 developed health care plans for patients who have  
15 suspected cancer?

16 A I have developed and worked with the patient and  
17 worked with specialists, yes, in regards to the  
18 plan of care of patients in our jail.

19 Q My question was more specific. So please listen  
20 carefully. Have you in the course of your work  
21 developed health care plans for inmates who had  
22 suspected cancer?

23 A I guess I do not understand what all you mean by  
24 plans. I help develop -- or help order tests and  
25 visits outside of the jail for care.

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1 Q Specifically with respect to suspected cancer, have  
2 you developed plans of care which would include  
3 followups, testing, referral to specialists? Yes  
4 or no?

5 A Yes.

6 Q How many times in the last five years have you  
7 developed a plan of care for an inmate with  
8 suspected cancer?

9 A I do not recall the number offhand, but I would  
10 guess 20 plus times.

11 Q And of those 20 plus times, were any of those  
12 suspected cancers involving the neck?

13 A I don't recall what all cancers offhand, but yes,  
14 there has been some of the neck -- head and neck.

15 Q But none involving tonsillar cancer; correct?

16 A I don't recall a case of tonsillar cancer, no.

17 Q I take it, Doctor, that you have specific areas of  
18 expertise; is that correct?

19 A Yes.

20 Q And what do you deem yourself to be an expert in?

21 A Well, I have extensive experience in correctional  
22 medicine so I feel that I have expertise in that  
23 area. I guess there's other areas in medicine I  
24 have expertise in, too, is clinical research, which  
25 I did for 30 years, and primary care medicine,

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1 family practice, which I -- I've been in family  
2 practice for 30 years.

3 Q You are board certified in family medicine; is that  
4 right?

5 A Yes, ma'am.

6 Q There is not a board certification in clinical  
7 research, is there?

8 A There's a certification you can achieve.

9 Q Do you have that?

10 A Yes.

11 Q Have you ever testified as an expert in clinical  
12 research?

13 A No.

14 Q Have you ever testified as an expert in family  
15 medicine?

16 A Not directly other than in these type of cases  
17 which many times involve family medicine.

18 Q Have you ever testified as an expert in  
19 correctional medicine?

20 A Yes.

21 Q How many times?

22 A Approximately 20.

23 Q Is there a reason why on your curriculum vitae or  
24 in your report you didn't list those 20 cases?

25 MR. McQUILLAN: I'm going to object. I

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1 believe the rule only requires a certain time frame  
2 of disclosure to be made, not for the entire  
3 lifetime that he's given testimony. But if you  
4 know the answer, you can answer.

5 Q How many of those 20 times that you served as a  
6 correctional medicine expert was done within the  
7 last four years?

8 A Maybe I misunderstood your question to begin with.  
9 Is your question -- maybe clarify for me. Was your  
10 question actually testified in a deposition or in  
11 court or did an expert review and report?

12 Q I asked you about testifying as an expert. In the  
13 last four years, how many times have you testified  
14 as an expert in correctional medicine?

15 A Actually testified in a deposition or in trial,  
16 four times now.

17 Q Four times?

18 A This is, I believe, number four.

19 Q Does that include today?

20 A Yes.

21 Q So three times prior to this --

22 A Yes.

23 Q -- is that right?

24 A Yes.

25 Q And all three times, was that on behalf of Corizon

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1 or Correctional Medicine Services?

2 A I don't have that information in front of me right  
3 now to know who -- who it was with.

4 MS. STAMLER: Court reporter, can you locate  
5 Exhibit 1, please? Would you please hand that to  
6 Dr. Stoltz and his lawyer.

7 (Exhibit 1 was handed to the witness.)

8 Q Do you have Exhibit 1 in front of you, Dr. Stoltz?

9 A I do.

10 Q And is this your curriculum vitae?

11 A Yes.

12 Q And is it complete and accurate as of today?

13 A It was updated January 5th of this year. I believe  
14 it's still accurate as of today.

15 Q With regard to your work at Covance Clinical  
16 Development Services, you ceased working there in  
17 2017; is that right?

18 A Yes.

19 Q And while you were there, you served as the medical  
20 director over medical pharmacy staff; is that  
21 right?

22 A Yes.

23 Q Is this one of the institutions where you were  
24 doing clinical research?

25 A Yes.

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1 Q And were these clinical researches work involving  
2 pharmaceutical companies?

3 A Yes.

4 Q So you were paid by pharmaceutical companies to  
5 conduct clinical trials; is that correct?

6 A No.

7 Q What were you paid to do?

8 A I actually was an employee of Covance.

9 Q Was Covance paid by the pharmaceutical industry to  
10 perform the clinical trials?

11 MR. McQUILLAN: If you know.

12 A Yes.

13 Q Do you know, sir, whether any of the clinical  
14 trials that you were involved with while at Covance  
15 involved any of the inmates either at Vanderburgh  
16 or Warrick County?

17 A No.

18 Q You also have worked with West Pharmaceutical  
19 Services. Is that a clinical research position as  
20 well?

21 A Yes.

22 Q And were you paid by the pharmaceutical company to  
23 do the clinical research?

24 A No.

25 Q Who was paying for your work?

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1 A GFI Research paid me.

2 Q Who was paying GFI?

3 MR. McQUILLAN: If you know.

4 A The pharmaceutical companies.

5 Q On any of the clinical trial work that you were

6 working on at either Covance or West

7 Pharmaceutical, were you working on any cancer

8 drugs?

9 A Yes.

10 Q How many times?

11 A I do not know.

12 Q Were any of those cancer drugs being used to treat

13 tonsillar cancer?

14 A The drugs we worked -- we did phase one clinical

15 research, which is the earliest in human research.

16 And for the most part, ours were in very early

17 development and not actually being used to treat

18 patients with diseases at that point.

19 Q So the answer to my question I assume is no then?

20 A No, we did not treat tonsillar cancer people at our

21 sites.

22 Q So it's fair to say you are not an expert in

23 oncology; is that right?

24 A I am not, no.

25 Q Nor are you an expert in radiation oncology or

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1 medical oncology; correct?

2 A Correct.

3 Q You are not an expert in ENT, ear, nose, and throat  
4 work; is that correct?

5 A Correct.

6 Q Now, on page 2 of your C.V., it lists St. Mary's  
7 Medical Center, Deaconess Hospital, and Evansville  
8 Protestant Home, all the places where you're doing  
9 work; is that right?

10 A Well, I'm on staff.

11 Q So you're on staff at St. Mary's and Deaconess; is  
12 that correct?

13 A That's correct.

14 Q And you also list Evansville Protestant Home as  
15 being a medical director; is that correct?

16 A That is correct.

17 Q Is that a paid position?

18 A I'm sorry?

19 Q Is that a paid position?

20 A Yes, it is.

21 Q Is there a reason why you didn't mention that to me  
22 when I asked you about your current employment?

23 A Honestly, I did not have my C.V. in front of me at  
24 that time when you asked that question. I forgot  
25 about that. It's a very minimal part of what I do.

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1 Q How many hours per week do you devote to your  
2 medical director at Evansville Protestant home?

3 A I would guess one to two hours per month.

4 Q And what's the population at that home?

5 A It's a nursing home. It has, I would guess, 100 --  
6 approximately 100 folks.

7 Q Are you the only medical director?

8 A Yes.

9 Q So for 100 residents, you spend one to two hours  
10 per month; is that correct?

11 A I don't take care of 100 residents.

12 Q Do you have a patient load?

13 A I have one patient.

14 Q You have one patient there?

15 A I do.

16 Q So are you the medical director over the entire  
17 home or just that one patient?

18 A The entire home.

19 Q Well, what do you do as the medical director?

20 A The home will call me if there's any issues with  
21 other residents, if they cannot contact a  
22 physician, if they need orders for something, if  
23 there's a problems, then I get involved.

24 Q Do you do any chart review?

25 A Occasionally.

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1 Q In your positions with the two county detention  
2 centers -- and if I've misstated what they're  
3 called, I apologize. Vanderburgh and Warrick, do  
4 you do quality assurance review of medical records?

5 A I do reviews of health assessments by the nurses  
6 frequently.

7 Q What about the other physician's work?

8 A Yes.

9 Q And is part of your review of those medical records  
10 a review in the way in which the charting is done?

11 MR. McQUILLAN: Objection to form. Vague.

12 Q Go ahead and answer.

13 A Repeat the question.

14 Q Sure. I asked you as part of your review of the  
15 medical records, do you review the charting?

16 A Yes.

17 Q And do you provide feedback to the physician who is  
18 charting on whether their charting is being done  
19 accurately, correctly?

20 A We have discussions from time to time about things  
21 that should be charted or things in general.

22 Q And you would agree with me, Dr. Stoltz, that  
23 charting is something that you learned in medical  
24 school; correct?

25 A Yes.

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1 Q And it's something that you understand is critical  
2 to the patient care; correct?

3 A Can be.

4 Q Is there a circumstance where charting wouldn't be  
5 critical to a patient care?

6 A Well, there's times you don't chart every single  
7 little tiny bit of information because it's not  
8 necessary. That's very dependent patient specific.

9 Q Would you agree, Doctor, that it's important that  
10 key findings during a physical exam should be  
11 charted?

12 A Yes.

13 Q Would you also agree with me, Doctor, that key  
14 findings during a physical exam should be charted  
15 accurately?

16 A Yes.

17 Q And you would agree that those charting  
18 requirements that is to be complete and accurate  
19 with regard to key findings are important in terms  
20 of the patient's care; correct?

21 A Could be.

22 Q When were you first contacted to work on this case?

23 MR. McQUILLAN: Objection. Privileged.

24 Attorney work product doctrine. Attorney-client  
25 communications.

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1 Q Are you declining to answer that question, Doctor?

2 MR. McQUILLAN: Can you restate your --  
3 actually, can the court reporter read back the  
4 question for us?

5 Q The question was, Doctor, when were you first  
6 contacted to begin working on this case?

7 MR. McQUILLAN: If you recall, I suppose  
8 that's all right.

9 A I don't recall. I guess I could go back on billing  
10 information to see when I first looked at something  
11 to give you an approximate time.

12 Q Okay.

13 A One moment.

14 Q What are you looking at as you're trying to answer  
15 this question?

16 A I was trying to see if I had a billing statement  
17 handy. Sometime in 2017, but I don't know the  
18 exact date.

19 Q And you've been paid for your expert opinions in  
20 this case; correct?

21 A Yes.

22 Q How much have you been paid so far by the defense?

23 A Just over 18,000.

24 Q Can you give me the exact number at this point?

25 A If you can add 10,375 plus 8,250, that will tell

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1       you.

2       Q   Okay.   And what hourly rate were you charging for  
3       your work?

4       A   \$500 per hour.

5       Q   And that was for case review; correct?

6       A   Case review --

7       Q   And you charge a higher -- pardon me?

8       A   Case review and doing the report.

9       Q   Okay.   And then you charge a higher fee of \$750 per  
10      hour to sit for a deposition; is that right?

11      A   Correct.

12      Q   Why do you charge a different rate for your  
13      deposition?

14      A   It takes more time out of my day, and it's just my  
15      -- it's my charges.   That's what I charge.

16      Q   But aren't you charging per hour whether it's for a  
17      case review or a deposition?

18               MR. McQUILLAN:   Objection to form.

19      Q   Go ahead and answer.

20      A   Say that again.

21      Q   Aren't you charging for your time whether it's for  
22      case review or deposition?

23      A   I charge for either one.

24      Q   Right.   But why the distinction between the hourly  
25      rate for preparing a report or reviewing documents

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1       versus sitting for a deposition?

2     A   I can prepare reports and review cases on my own  
3       time, evenings, weekends, whenever I want.

4       Depositions or trial, I have to take time out of my  
5       day and schedule a day where I can't get anything  
6       else done. I probably don't charge enough.

7     Q   Your report is dated March 9th of 2018; is that  
8       right?

9     A   Yes.

10    Q   Did you write this report on your own?

11    A   Yes.

12    Q   Did you type it?

13    A   Yes.

14    Q   So you typed every item that's contained in your  
15       report; is that correct?

16    A   Yes, ma'am.

17               MS. STAMLER: All right. Madam Court  
18       Reporter, would you locate Exhibit 2, please?

19               (Exhibit 2 was handed to the witness.)

20    Q   Before we start on Exhibit 2, can we go back for a  
21       moment to Exhibit 1, Doctor? And let me ask you if  
22       I might. Did you receive any sort of awards or  
23       honors during your educational experience either in  
24       your residency, obtaining your medical degree, or  
25       your B.S. in biology?

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1 MR. McQUILLAN: You can use your C.V. if it  
2 helps refresh your recollection.

3 A I don't believe -- let's see. I don't think it  
4 lists specifically awards other than I listed  
5 memberships on my C.V.

6 Q I'm asking about your education. You did not  
7 receive any honors with regard to your degrees or  
8 your residency; is that correct?

9 MR. McQUILLAN: If you recall.

10 MS. STAMLER: It's understood if you recall.  
11 Kevin, please don't lead the witness.

12 A In medical school, I had honors, in the University  
13 School of Medicine. Or actually, I believe -- yes.  
14 But I did not list that on the C.V. I probably  
15 received other awards. I don't keep track of that  
16 type thing.

17 Q On your C.V., you list membership and awards, but  
18 is it fair to say that beginning near the bottom of  
19 page 3 and continuing onto page 4, you don't list  
20 any awards. These are all memberships; correct?

21 A That is correct.

22 Q Do you have any honors or awards?

23 A Well, I received some honors and awards from some  
24 of those different groups such as Vanderburgh  
25 County Medical Society, I got an award for being

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1 the president of the medical society for a while.  
2 An award from the Association Clinical Research  
3 Professionals at one point. Different awards for  
4 different things. American Academy of Family  
5 Physicians, the fellowship award. I don't have it  
6 listed there.

7 Q Now, towards the last part of your C.V., you had an  
8 appendix with a number of publications listed;  
9 correct?

10 A Yes.

11 Q Is it fair to say that none of these publications  
12 pertain to cancer; correct?

13 A I would have to look at each one of them and see if  
14 they're actually -- these drugs may actually work  
15 within our clinical research. There could be some  
16 relationship to some cancer treatment with some of  
17 the drugs. I'd have to review those closely.  
18 Let's see.

19 Q If you need a minute to do that, we can go off the  
20 record and come back on after you've reviewed it.  
21 Do you want to do that?

22 A We could.

23 MS. STAMLER: Okay. Why don't we take just a  
24 couple minutes. I'm going to take a quick break  
25 and run to the restroom. I'm going to keep the

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1 phone line on, and I'll be right back, okay, and  
2 give you a moment to look through that.

3 (A brief recess was taken.)

4 Q Dr. Stoltz, we went off the record to give you an  
5 opportunity to look at the list of publications  
6 you've provided in appendix 1 to your C.V. Did you  
7 do that, sir?

8 A Yes.

9 Q And in reviewing it, were you able to locate any  
10 publications that pertain to cancer drugs?

11 A Yes.

12 Q Which articles?

13 A On page 6, the third one from the bottom.

14 Q Pharmacokinetics, that one?

15 A Yes.

16 Q What about that pertains to cancer?

17 A That drug is actually still in development for  
18 certain types of cancer.

19 Q And do you know what type of cancer?

20 A T-cell lymphomas for one, but I don't know what  
21 else -- I'm not sure what all it's being developed  
22 for.

23 Q You're not currently working on that; right?

24 A No.

25 Q Anything else in your publications?

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1 A Not for cancer that I can point out here.

2 Q And I take it that type of cancer is different from  
3 the type of cancer Mr. Franklin had; correct?

4 A As far as I know, yes.

5 Q Lymphoma is a type of blood disorder?

6 A I'm sorry. What was the question?

7 Q Do you know how that type of cancer is defined?

8 A A T-cell lymphoma?

9 Q Yes.

10 A It's a cancer of a lymph gland system.

11 Q Can you tell me every publication on your list of  
12 publications that pertain to drugs that may treat  
13 cancer?

14 A I don't think any of the rest of them were in  
15 development for cancer.

16 Q Now, turning to Exhibit 2 to your deposition, which  
17 is a portion of your report because your report  
18 also contained your C.V.; is that right?

19 A Yes.

20 Q All right. So I split them up but Exhibit 2 is the  
21 contents of your report; is that right?

22 A Yes.

23 Q Can you explain to me, sir, why the font is  
24 different on multiple pages?

25 A I can't give you a good explanation other than my

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1 Word -- Microsoft Word must have somehow when I  
2 typed it up come out that way. I'm not an expert  
3 typist or computer expert.

4 Q So you would agree with me that on page 1, the  
5 caption of the case looks very different from case  
6 number, title of your report, and the date of  
7 settlement; correct?

8 A I tend to highlight in bigger font size on -- when  
9 I do my reports.

10 Q The caption is an entirely different font; correct?

11 A Yes.

12 Q Do you know if you cut and pasted that from  
13 somewhere else?

14 A Not that I know of. I don't know where I would cut  
15 and paste it from.

16 Q With respect to your volunteer faculty member work  
17 for the university, how much time do you devote to  
18 that work on a weekly basis?

19 A That varies a lot. It depends on -- the way it  
20 works is the Indiana University School of Medicine  
21 has medical students, either third or fourth year  
22 medical students, who can do rotation in either --  
23 they do it either in clinical research or spend  
24 time with me and we actually would go to the jail  
25 sometimes, but they would spend a month at a time

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1 in rotation.

2 So one month, two or three months, we may have  
3 a student every month. Other months, we would not.  
4 So it just varies.

5 Q Are you actually teaching courses?

6 A They would do, yes, a course in clinical  
7 pharmacology. I did a lot last year.

8 Q Do you teach any other courses besides clinical  
9 pharmacology?

10 A No.

11 Q Your answer is no?

12 A No other courses, no. That was the title of the  
13 course.

14 Q Sorry. What did you say?

15 A The title of the course was clinical pharmacology.

16 Q Then the students that are rotating through your  
17 faculty work would be those students that are  
18 studying pharmacology?

19 A If they wanted to do a -- the way Indiana  
20 University works is in your third and fourth year,  
21 you can do elective rotations in different areas.  
22 And so they could take an elective in clinical  
23 pharmacology and spend a month with me.

24 Q Have you taught any other courses at the Indiana  
25 University School of Medicine?

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1 A No.

2 Q And you still work for the Indiana University  
3 School of Medicine as a volunteer faculty member is  
4 what you testified to?

5 A Yes.

6 Q Do you do any other work with the Indiana  
7 University School of Medicine?

8 A Not currently.

9 Q Have you in the past?

10 A No. Just volunteer education for medical students.

11 Q In the area of pharmacology?

12 A Yes.

13 Q Have we covered all the work that you do for the  
14 Indiana University School of Medicine?

15 A I mean, I -- I even have it on my C.V. They  
16 sometimes will spend time with me in general family  
17 medicine to understand what goes on with family  
18 practice, that type of thing, and also they'll  
19 actually come with me to the corrections to see  
20 what I do in correctional health care, but the  
21 rotation itself is not really called family  
22 medicine or correctional health care. It's  
23 clinical pharmacology.

24 Q You were retained by the Chapman Law Group to do  
25 what in this case?

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1 A To review this case and give an expert opinion.

2 Q What was your goal in this case?

3 MR. McQUILLAN: Objection. Form. Vague.

4 Q Go ahead and answer.

5 A My goal was to give an honest opinion -- expert  
6 opinion on my thoughts regarding the case.

7 Q And other than what's in your report, did you  
8 review anything else in rendering the requested  
9 opinions?

10 A I don't believe so.

11 Q You didn't rely on any publications, peer review  
12 publications --

13 A No.

14 Q -- in reaching any of your opinions?

15 A No.

16 Q Do you consider yourself to be an experienced or  
17 inexperienced expert witness?

18 A I have experience doing it several times.

19 Q On the last page of your report, Doctor, page  
20 number 7, it lists your charges to serve as an  
21 expert; correct?

22 A Yes.

23 Q It also indicates the list of your publications was  
24 provided with your C.V., and then you list your  
25 testimony by deposition, and you only listed one;

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1 is that right?

2 A At that time back in March, yes.

3 Q So since March of 2018, you've testified twice  
4 more; is that correct?

5 A Correct.

6 Q Were those by way of deposition?

7 A Yes.

8 Q Those were both for the Chapman Law Group as well?

9 A I believe so.

10 Q Did you ever sign any affidavits on behalf of the  
11 Chapman Law Group in any litigation?

12 A I don't recall offhand.

13 Q You don't recall? Did you ever do any work on a  
14 case with the plaintiff's name of Green?

15 A That name sounds familiar.

16 Q Do you recall a case named Chad Green versus  
17 Correctional Care Solutions, Inc.?

18 A Yes.

19 Q You served as expert for Chapman Law; correct?

20 A I don't have that information in front of me right  
21 now. I do not recall which law firm it was.

22 Q Well, do you remember signing an affidavit in that  
23 case?

24 A I've signed affidavits in the past, but I don't  
25 remember if it was that case or not, honestly.

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1 Q Well, do you remember a doctor by the name of  
2 Phillip Buroeher?

3 A I remember that name.

4 MS. REPORTER: Could you spell that?

5 MS. STAMLER: B-u-r-o-e-h-e-r.

6 Q Do you charge the same amount for your expert work  
7 for all clients that retain you?

8 A I do.

9 Q Do you have any notion of how the defense attorney  
10 chose you to be an expert in this case?

11 A No.

12 Q Do you advertise your expert services?

13 A I do not.

14 Q Do you know how your name is out there as a  
15 potential expert?

16 A Honestly, I do not. Although, I do know --

17 Q I'm sorry. Go ahead. I thought you were done.

18 A I'm sorry. I was going to say maybe through the  
19 NCCHC or the American Academy of Correctional  
20 Physicians. I think they do post names out there  
21 at times of people willing to do expert work.

22 Q Can you clarify on the record the two entities?  
23 You used their acronyms, but if you could testify  
24 for the record each of these entities.

25 A And maybe -- I want to clarify what you said. I do

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1 not personally advertise through their  
2 organizations, but I think they may list my name  
3 out there. I don't know.

4 One of them is the National Commission on  
5 Correctional Health Care, and the other one is the  
6 American College of Correctional Physicians.

7 Q And to your knowledge, they maintain some type of  
8 list of individuals who will serve as experts?

9 A I don't know that for a fact, but I do think the  
10 ACCP does do that.

11 Q Okay. Anywhere else that your name might appear as  
12 a potential expert in correctional medicine?

13 A I don't know.

14 Q Can you identify in the record for me, Doctor,  
15 since I'm not sitting with you, whether you brought  
16 documents with you in response to your notice for  
17 the deposition?

18 A Yes.

19 Q What did you bring?

20 A I brought in billing statements, a copy of the  
21 report, and a copy of your request, and a flash  
22 drive of Franklin's records.

23 Q Okay. I am going to ask the court reporter to mark  
24 those as an exhibit to the -- all of those as an  
25 exhibit to the deposition, but what I'll do, so we

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1 can keep these exhibit numbers in order, we'll mark  
2 them at the end -- we can do that now. My last  
3 exhibit number currently is 19. So if you wouldn't  
4 mind marking those as Exhibit 20, and we'll --  
5 actually, I think we've identified them on the  
6 record already. And I'd like those to be made part  
7 of the record.

8 (Exhibit 20 was marked for identification.)

9 Q Did you read, Dr. Stoltz, the deposition transcript  
10 of Dr. Levin?

11 A Yes. Oh, expert report. Not deposition but the  
12 expert report?

13 Q Do you know Dr. Levin?

14 A No.

15 Q You've already indicated that you read Dr. Mathis'  
16 report and transcript of his deposition. Do you  
17 know Dr. Mathis?

18 A No.

19 Q Have you heard of him?

20 A No.

21 Q Do you know that he is an expert in correctional  
22 medicine?

23 A Okay. I don't know him.

24 Q And you didn't read his credentials or anything  
25 like that?

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1 A I don't believe I saw his C.V.

2 Q Do you know any of the defendants in this case  
3 personally?

4 A No.

5 Q Prior to being hired by the defendants to give  
6 expert opinions in this case, had you performed any  
7 record review for Keith Franklin's care of  
8 treatment while incarcerated in the Department of  
9 Corrections from August 2012 until his date of  
10 death?

11 A I think I missed what you said in the very  
12 beginning there.

13 Q Before you were hired to give an expert opinion for  
14 the defendants, had you performed any record review  
15 on Keith Franklin's care and treatment at the  
16 Department of Corrections from August 2012 until  
17 his date of death?

18 A No. I never had access to any of his information  
19 prior to what was provided by counsel.

20 Q Did you meet in preparation for your deposition  
21 with defense counsel?

22 MR. McQUILLAN: Objection. Privileged. Work  
23 product doctrine.

24 Q I'm not going to ask what you talked about. Did  
25 you meet to prep for your deposition?

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1 A Yes.

2 Q Was anybody else present besides you and the  
3 lawyer?

4 A No.

5 Q Did you fail any of your courses during medical  
6 school?

7 A No.

8 Q Did you complete your residency within three years?

9 A Yes.

10 Q When was that done?

11 A 1984 to 1987 per the C.V.

12 Q What year did you complete medical school?

13 A 1984.

14 Q Have you been continuously board certified as a  
15 family medicine physician?

16 A Yes.

17 Q Did you pass your boards the first time each time  
18 you took the exam?

19 A Yes.

20 Q Is it fair to say that you only hold a medical  
21 license in Indiana; is that right?

22 A That is correct.

23 Q Have you ever had your license revoked or  
24 suspended?

25 A No.

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1 Q Have you ever held a license in any other state?

2 A No.

3 Q Did you pass your residency on your first attempt?

4 A Yes.

5 Q Did you have any fellowships following your  
6 residency?

7 A No.

8 Q Family medicine. Pardon me?

9 A No.

10 Q Can you tell me briefly what constitutes the  
11 specialty of family medicine?

12 A Family medicine is a broad specialty. It  
13 encompasses -- they sometimes say from cradle to  
14 grave and everything in between taking care of  
15 babies and teenagers and adults of general  
16 medicine. Sometimes obstetric practices. A little  
17 bit of everything you might say.

18 Q Is family medicine synonymous with a general  
19 practitioner?

20 A It's -- the old fashioned days it was the same as  
21 the general practitioner, but over time the general  
22 practitioners tend to be non-board certified. Then  
23 became the specialty of family practice where you  
24 had to go into the board certification, maintain  
25 certification, and for the most part, weeded out

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1 what they used to call the general practitioner.

2 Q How is a family medicine doctor different from an  
3 internal medicine doctor?

4 A Internal -- well, that can vary a lot from place to  
5 place. Internal medicine typically specialize more  
6 in hospital-based patients, more specific disease  
7 problems; whereas, family medicine took care of  
8 more the family in general, did minor office  
9 procedures, may take care of infants, kids;  
10 whereas, internal medicine takes care of generally  
11 adults only.

12 Q Have you ever been qualified as a family medicine  
13 expert by a judge?

14 A I guess not, no. I don't think so.

15 Q Pardon?

16 A No, not specifically as a family medicine expert.  
17 I have not heard that term.

18 Q And I think you testified earlier that a judge had  
19 qualified you as a correctional medicine expert?

20 A Yes.

21 Q How many times?

22 A Once.

23 Q Was that in connection with the cases you cited to  
24 in your report on page 7?

25 A In my report or C.V.?

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1 Q I didn't see it in your C.V. The only place I saw  
2 your reference to case work --

3 A Oh, yes. That's correct.

4 Q -- is in your report?

5 A Yeah, you're right. You're correct.

6 Q So there you said you testified by deposition. Did  
7 the judge qualify you as an expert in that case?

8 A No. That was a different case from a deposition.  
9 This was actually in a courtroom situation.

10 Q And what courtroom was that?

11 A It was in Chicago. I don't recall the -- part of  
12 the medical licensing board in Chicago.

13 Q Oh, this is for one that you listed as medical  
14 licensing board matter?

15 A Correct.

16 Q That was not a civil problem involving correctional  
17 medicine; correct?

18 A Correct.

19 Q Is that right?

20 A Yes.

21 Q And what type of case were you serving as an expert  
22 in in relation to the medical licensing board?

23 A I can't give you the details, but it was over a  
24 physician in a jail, a matter in regards to doing  
25 the proper thing against her medical license.

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1 Q And were you there on behalf of the physician or  
2 the state?

3 A The physician.

4 Q You were there for the physician; is that right?

5 A On the side of the physician, yes.

6 Q And I take it without getting into the details, did  
7 you render an opinion that the physician had done  
8 nothing wrong?

9 A Correct.

10 Q Sir, what do you do to stay current in family  
11 medicine?

12 A In family medicine, you must stay current because  
13 you have to have 50 hours of continuing education  
14 per year. The American Board of Family Practice or  
15 Family Medicine makes you do a lot of things to  
16 keep your hours up to date. Online courses. I go  
17 to meetings. I get pretty involved in the National  
18 Commission on Correctional Health Care, going to  
19 their meetings to get CMEs. The American College  
20 of Correctional Physician meeting and CMEs and a  
21 variety of other journals you fill out and send in  
22 request forms.

23 Q Do you routinely review peer review articles in  
24 family medicine?

25 A Yes.

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1 Q Do you routinely review peer review articles of  
2 correctional medicine?

3 A Correct.

4 Q And what type of publications are you reviewing  
5 with regard to correctional medicine?

6 A That can be a pretty broad topic. Each month the  
7 National Commission puts out a journal of articles  
8 that I read as well as the Academy of Correctional  
9 Physicians does the same thing.

10 Q Are there specific areas of interest that you focus  
11 on or do you read these publications from cover to  
12 cover?

13 A I look at things that interest me. There may be  
14 articles that I have no interest in. It just  
15 depends on what the topic is.

16 Q And are there specific areas of interest that you  
17 focus in on with regard to correctional medicine?

18 A I can't say in particular a certain area. I like  
19 to look at things in general to keep up to date on  
20 what's going on. Especially since I go out and do  
21 the surveys for the National Commission of  
22 different jails and prisons, I want to make sure  
23 I'm up to date on what's going on out there.

24 Q And have there been updates or modifications in  
25 areas of surveying that you've seen in the last two

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1 years?

2 A Yes.

3 Q And has one of the areas that's been an area of  
4 focus in correctional medicine is the care and  
5 treatment of inmates with cancer?

6 A Not so much cancer itself. There are different  
7 standards that the National Commission looks at to  
8 make sure there's access to care and there's  
9 continuity of care and chronic care guidelines are  
10 developed and being followed, that type of thing.

11 Q What is the definition of correctional medicine?

12 A Correctional medicine is a branch of medicine that  
13 deals with the care of inmates. We call them  
14 patients but deals with patients in a correctional  
15 environment.

16 Q And there is a unique aspect to that kind of care  
17 and treatment; correct?

18 A Yes. You have custody issues that have to be dealt  
19 with as well as general medical issues.

20 Q And one of the distinctions between inmate  
21 population and the medical care, is that the  
22 medical care is on site for the non-specialty care;  
23 correct?

24 A That is quite typical, yes.

25 Q And to the extent an inmate needs specialty care

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1 including testing or treatment, that typically  
2 happens off site; correct?

3 A More so than not.

4 Q Right?

5 A More so than not. Some facilities offer in-house,  
6 but most of the time, they have to be sent out,  
7 especially in jail situations.

8 Q Well, that's what I'm referring to. Prisoners in a  
9 jail or prison situation. Are you familiar with  
10 that?

11 A Yes.

12 Q You're familiar with the fact that inmates are  
13 dependent upon the system, including the medical  
14 providers and the administration of the treatment,  
15 in order to get medical care; correct?

16 A Correct.

17 Q Do you have any disciplinary complaints lodged  
18 against your medical license?

19 A No.

20 Q Have you been subjected to any discipline by any  
21 board?

22 A No.

23 Q Have you been subjected to any discipline by any  
24 organization?

25 A No.

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1 Q Have you ever been sued for malpractice?

2 A No.

3 Q Have you ever been disqualified as an expert in any  
4 case?

5 A No.

6 Q The judge that qualified you as an expert in the  
7 medical licensing board trial, was that judge an  
8 administrative law judge?

9 A I don't know.

10 Q I think I heard you testify to this. You have not  
11 testified as an expert in family medicine; is that  
12 correct?

13 A Not specifically in family medicine unless you're  
14 including correctional work as part of family  
15 medicine. I mean, many times it is. I'm not sure  
16 what you're referring to.

17 Q Well, in this case, have you been called upon to  
18 serve as an expert in the area of correctional  
19 medicine or family medicine?

20 A This case, like most of the cases, it's in the area  
21 of correctional medicine because it happened in a  
22 correctional situation, but honestly, much -- even  
23 in this case is the same thing a family practice  
24 doctor does and probably these doctors are, you  
25 know, just like me, family doctors.

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1 Q So are you testifying as an expert in this case as  
2 a correctional medicine expert and a family  
3 medicine expert?

4 A I guess I've never looked at it that way. I'm  
5 testifying as -- based on what my -- my background  
6 and my experience in correctional medicine as well  
7 as family practice, looking at the information  
8 here, and based on my education, training, and  
9 experience, I wrote the report.

10 Q I understand that. But I'm asking you, sir, are  
11 you giving expert opinions on correctional medicine  
12 in this case?

13 A Yes.

14 Q Are you giving expert opinions on family medicine  
15 in this case?

16 A I guess you could have a combination of both in  
17 this case.

18 Q Is that a yes?

19 A Yes.

20 Q You are not here to provide expert testimony in the  
21 field of oncology, medical oncology, radiation  
22 oncology, or chemotherapy; is that correct?

23 A That is correct.

24 Q Prior to serving as an expert in this case, were  
25 you required to secure approval from any of your

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1 employees to do this expert work?

2 A No.

3 Q Have you ever been told, sir, that you cannot do  
4 expert work for plaintiffs in prison medical cases?

5 A No, I have not ever been told that.

6 Q Do you hold a law degree, sir?

7 A No, ma'am.

8 Q Fair to say you are not qualified to give a legal  
9 opinion; is that right?

10 A That's correct.

11 Q Are you familiar with the term deliberate  
12 indifference?

13 A Yes.

14 Q Yes?

15 A Yes.

16 Q Are you familiar with the statute 42 USC section  
17 1983?

18 A I'm not sure.

19 Q Do you know that the term deliberate indifference  
20 is a legal term?

21 A Yes.

22 Q Do you know that deliberate indifference is not a  
23 medical term?

24 A Correct.

25 Q You said you understand or know that term

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1 deliberate indifference; is that right?

2 A Yes.

3 Q How did you gain your knowledge regarding that  
4 term?

5 A That's a term that's commonly brought up at annual  
6 meetings at the NCCHC or the ACCP as well as in  
7 other journals, articles that can be read and  
8 reviewed.

9 Q Have you ever read any legal opinions regarding  
10 deliberate indifference?

11 A I'm sure I probably have.

12 Q Have you read opinions that indicate that a delay  
13 in medical diagnosis can constitute deliberate  
14 indifference?

15 MR. McQUILLAN: Objection. Calls for a legal  
16 conclusion.

17 Q Go ahead and answer.

18 A Say the question again.

19 Q Have you ever read a legal opinion or opinions that  
20 indicate that a delay in a medical diagnosis can  
21 constitute deliberate indifference?

22 MR. McQUILLAN: Same objection.

23 A I'm not sure if I ever read that or not. I don't  
24 know.

25 Q Do you know that, sir, to be the case --

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1 MR. McQUILLAN: Same objection.

2 Q -- that a delay -- let me just finish my  
3 question -- that a delay in medical diagnosis can  
4 constitute deliberate indifference?

5 MR. McQUILLAN: Objection. Calls for a legal  
6 conclusion.

7 Q Go ahead and answer.

8 A I don't know that for a fact.

9 Q Sir, you used the term deliberate indifference in  
10 your report, didn't you?

11 A I may have mentioned that.

12 Q May have? Do you know if you did or not?

13 A I have to read exactly the wording in the report.  
14 What page are you referring to?

15 Q Pardon me?

16 A What page are you referring to?

17 Q There are several parts of your report where that  
18 term appears. Beginning on page 2 under your Scope  
19 of Engagement, do you see the term deliberately  
20 indifferent contained therein?

21 A Yes.

22 Q And continuing on multiple pages thereafter, did  
23 you use the term deliberately indifferent? Yes or  
24 no?

25 A I'd have to look through the rest of the report and

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1 reread it to see if I actually used that exact  
2 term.

3 Q All right. Well, if we need to take a break where  
4 you have to look at this --

5 A Sure.

6 Q We'll go off the record and I'll give you a moment  
7 to take a look to see if you can find any other  
8 spot where you use the term deliberate indifference  
9 or deliberately indifferent. Let me know once  
10 we're off the record when you're ready to get back  
11 on the record after you've reviewed your report.

12 (A brief recess was taken.)

13 Q We went off the record, Dr. Stoltz, so that you  
14 could review your report to determine whether you  
15 had stated in your report deliberately indifferent.  
16 Did you do so?

17 A No.

18 Q Pardon?

19 A No.

20 Q No, you did not?

21 A The only time I mentioned it was in the very  
22 beginning -- the initial paragraph you mentioned,  
23 the Scope of Engagement, which came off the  
24 plaintiff's complaint.

25 Q Did you -- so you wrote, "This report details my

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1 expert opinions as to whether Defendants from  
2 Corizon Corporation (providing medical services at  
3 the Michigan Department of Corrections) acted  
4 deliberately indifferent or deviated from the  
5 standard of care in regards to Keith Franklin's  
6 serious medical needs." Did I read that correctly?

7 A Yes.

8 Q You wrote that, sir, correct?

9 A That's what I just said a moment ago.

10 Q All right. What did you mean by the term  
11 deliberately indifferent?

12 A That they intentionally delayed things,  
13 intentionally did not work on the care of  
14 Mr. Franklin while he was a patient there.

15 Q So it's your understanding in evaluating the  
16 records in this case and rendering your opinion  
17 that you use that definition; is that correct?

18 A Well, like I said previously, I'm not a lawyer.  
19 I'm not a law expert but --

20 Q Rendering an opinion as to the care in this case as  
21 to whether it was a deliberately indifferent;  
22 correct?

23 MR. McQUILLAN: Counsel, please allow the  
24 witness to finish answering before you interrupt  
25 him with another question.

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1 MS. STAMLER: Kevin, I apologize. I thought  
2 he was done.

3 MR. McQUILLAN: Not a problem.

4 MS. STAMLER: I'm not there. I can't see him  
5 so I apologize.

6 Q Did I cut you off, Doctor?

7 A I was going to say in my report, in my opinion, I  
8 commented on was there deliberate delays or  
9 intentional delays in care for this individual by  
10 the medical team that we're referring to here.

11 Q And in rendering your opinions, you used the  
12 definition that you provided on the record, that is  
13 that these individuals from your perspective did  
14 not act intentionally. Is that your testimony?

15 MR. McQUILLAN: Objection. Calls for a legal  
16 conclusion.

17 Q Go ahead and answer.

18 A Well, I'd say refer to my report. I mentioned I  
19 did not feel they deliberately avoided or delayed  
20 treatment of Mr. Franklin.

21 Q And what I'm asking you, Doctor, the term that you  
22 used is deliberately, and you've defined that term  
23 as being acting intentionally; correct?

24 A I guess I would use it more like a synonym, that in  
25 my opinion did I feel that they intentionally did

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1 something to delay treatment or diagnosis or  
2 whatever to Mr. Franklin.

3 Q Do you understand, Doctor, as you sit here today  
4 that the term deliberate indifference includes an  
5 objective and subjective standard? Yes or no?

6 MR. McQUILLAN: Objection. Calls for a legal  
7 conclusion.

8 Q Go ahead and answer.

9 A I guess I'm somewhat confused. I guess I'm not a  
10 legal expert other than the fact I reviewed the  
11 case to see if I felt there was either the word  
12 deliberately or intentionally did not care for him  
13 the way that I would expect them to respond to his  
14 needs.

15 Q And as you've testified, you used the term  
16 deliberately as synonymous with intentionally;  
17 correct?

18 A Yes.

19 Q Have you ever heard of the case of Estelle V.  
20 Gamble?

21 A Yes.

22 Q What does that case from your understanding, I  
23 understand you're not a lawyer but you're  
24 correctional medicine doctor, what do you  
25 understand that case stands for?

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1 MR. McQUILLAN: Objection. Calls for a legal  
2 conclusion.

3 Q Go ahead and answer.

4 A I don't have all the case information in front of  
5 me. I don't -- I can't really comment on it right  
6 at this point.

7 Q Doctor, do you know whether failure to timely treat  
8 a serious medical condition can be deliberate  
9 indifference under the law?

10 MR. McQUILLAN: Objection. Calls for a legal  
11 conclusion.

12 Q Go ahead and answer.

13 A I would agree that I cannot legally answer one way  
14 or another.

15 Q In your report, Doctor, on page 2, you have a  
16 heading at the bottom that says the materials that  
17 you reviewed and relied upon to make findings,  
18 reach opinions, and draw conclusions; is that  
19 right?

20 A Yes.

21 Q What is the difference between findings, opinions,  
22 and conclusions?

23 A Well, my findings are more or less the facts in the  
24 case, and then I reach --

25 Q What is your opinions?

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1 A My opinions are based on the findings and the  
2 sequence of events, and the conclusions is the  
3 final statement of my findings and opinions  
4 altogether.

5 Q Let me understand. Your findings are the facts.  
6 Your opinions are your findings based on -- I'm  
7 sorry. What was your opinion?

8 A The opinions are my thoughts based on the facts and  
9 the sequence of events, and the conclusion is just  
10 a final statement on -- after putting it  
11 altogether, here is my conclusions.

12 Q Are your conclusions different from your opinions?

13 A They're part of the final statement of the  
14 opinions.

15 Q In the section of your report that's labeled  
16 summary of findings, in this section you're  
17 summarizing the sequence of events and the  
18 generalized facts; is that right?

19 A Yes.

20 Q And I take it, sir, you created these findings  
21 after reviewing the records that you've listed in  
22 your report; correct?

23 A Correct.

24 Q In other words, you didn't have a timeline provided  
25 to you from some other source; is that right?

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1 A That's correct.

2 Q And I take it before you finalized your report, you  
3 made sure that what you wrote in your report was  
4 accurate; correct?

5 A That's my goal usually to do that.

6 Q And you were accurate both in terms of the sequence  
7 of events, that being the dates or the time of when  
8 things happened, and when you quoted things, you  
9 quoted them accurately; correct?

10 A That's my intention.

11 Q Well, did you do that, sir?

12 A I hope so. That's what I try to do every time.

13 Q Pardon me?

14 A I said that's my intention to do that every time I  
15 do a report.

16 Q Well, before you sign off on it, do you ensure that  
17 it's complete and accurate from your standpoint?

18 A I try to.

19 Q Did you do that with this report?

20 A I try to do it on every report.

21 Q I want to know about this report. I don't care  
22 about your other reports. Did you do that with  
23 this report?

24 A I do the same thing on every report.

25 Q Is that a yes, you did that here?

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1 A I tried to verify the facts and the timeline of  
2 events, yes.

3 Q How many drafts of your report did you have?

4 A I don't recall.

5 Q How many changes did you make to the report?

6 A I guess my report is probably a draft in progress  
7 as I go through the report until I finalize the  
8 report.

9 Q Do you recall what changes you made?

10 A No.

11 Q Did you in summarizing the sequence of events and  
12 the generalized facts put into the report those  
13 facts that you thought were key in reaching your  
14 opinions?

15 A Yes, I try to do that.

16 Q Did you do that?

17 A That's my goal, yes.

18 Q Would you agree with me, Doctor, that a delay of  
19 six months from diagnosing a suspicious mass of  
20 cancer could be deliberately indifferent?

21 MR. McQUILLAN: Objection. Calls for a legal  
22 conclusion.

23 Q Go ahead and answer.

24 A I don't know from a legal standpoint how you  
25 conclude that, but I would say if someone has a

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1 true suspicious mass, you're worried about cancer,  
2 and you don't do anything about it, any evaluation,  
3 referral, anything, that's not good.

4 Q Well, I want to ask you the question I asked and  
5 see if you can answer it. If you can't, tell me  
6 you can't.

7 Do you agree that a delay of six months  
8 diagnosing a suspicious mass of cancer could  
9 constitute deliberate indifference?

10 MR. McQUILLAN: Objection. Calls for a legal  
11 conclusion.

12 Q Go ahead and answer.

13 A I can't answer that without more information  
14 probably.

15 Q Would you agree with me, Doctor, that a delay of  
16 eight months in treating a cancerous mass could be  
17 deliberately indifferent?

18 MR. McQUILLAN: Objection. Calls for a legal  
19 conclusion.

20 Q Go ahead and answer.

21 A Once again, I can't answer that from a legal  
22 standpoint.

23 Q How about from a medical standpoint?

24 MR. McQUILLAN: Same objection.

25 Q Go ahead and answer.

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1 A What's the question from a medical standpoint?

2 Q Do you believe that a delay of eight months in  
3 treating a cancerous mass could be deliberately  
4 indifferent to the patient's medical needs?

5 MR. McQUILLAN: Objection. Calls for a legal  
6 conclusion.

7 A Once again, it's not from a medical standpoint.  
8 It's more of a legal standpoint.

9 Q You can't answer that; is that right?

10 A That's correct.

11 Q Do you agree with me, Doctor, that cancer is a  
12 serious medical condition?

13 MR. McQUILLAN: Objection. Calls for a legal  
14 conclusion.

15 MS. STAMLER: How is that a legal conclusion?

16 MR. McQUILLAN: I'd refer you to Blackmar  
17 versus Calverton County from the Sixth Circuit, as  
18 well as Napier versus Madison County from the Sixth  
19 Circuit, Estelle versus Gamble, Farmer versus  
20 Brennan, and Wilton versus Cider from the United  
21 States Supreme Court. All five of those cases make  
22 reference to and give definitions to terms  
23 including deliberate indifference, serious medical  
24 needs --

25 MS. STAMLER: I didn't ask about deliberate

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1 indifference. I asked about a serious medical  
2 condition.

3 Q Doctor, do you know what the term serious medical  
4 condition means?

5 MR. McQUILLAN: I'm sorry, Counsel. I was  
6 responding to the statement you asked of me.

7 MS. STAMLER: I didn't ask for -- I did not  
8 ask for a dissertation on the law. I'm well aware  
9 of the law. I'm asking this doctor a medical  
10 question.

11 MR. McQUILLAN: I'm sorry. Counsel, that's  
12 not what I recall, and we can have the court  
13 reporter read it back, but I would really like it  
14 if you would stop with the argumentative and  
15 shouting tone. It's really unnecessary.

16 MS. STAMLER: It's not -- I'm not shouting.  
17 I'm trying to get my point across, and I'm on a  
18 phone, and you're talking over me. I am trying to  
19 ask this witness, who is a physician in  
20 correctional medicine, if he understands whether  
21 cancer is a serious medical condition or not.

22 MR. McQUILLAN: And once again, I object.

23 Q Do you have an opinion, Doctor?

24 MR. McQUILLAN: Once again, I object for a  
25 question that is seeking to elicit a legal

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1 conclusion.

2 Q Go ahead and answer, Doctor.

3 A Cancer can be a serious medical condition.

4 Q Do you agree, Doctor, that a suspicion of cancer  
5 can be a serious medical condition?

6 MR. McQUILLAN: Objection. Calls for a legal  
7 conclusion.

8 Q Go ahead and answer.

9 A I think that's speculation.

10 Q There are some suspicions of cancer that could not  
11 be a serious medical condition?

12 MR. McQUILLAN: Objection. Calls for legal  
13 conclusion.

14 Q Go ahead and answer.

15 A I guess I'm somewhat confused. If there's a  
16 suspicion for cancer, it should be evaluated.

17 Q Okay. And it should be evaluated, sir, because  
18 cancer is, as you testified, potentially a serious  
19 medical condition; correct?

20 MR. McQUILLAN: Objection. Calls for a legal  
21 conclusion and mischaracterizes the witness'  
22 testimony.

23 Q Go ahead and answer.

24 A If someone has cancer, it -- especially in their  
25 eyes, it's going to be considered a serious medical

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1 problem.

2 Q Well, as a physician, do you consider cancer to be  
3 serious?

4 A It depends on what type of cancer.

5 Q What about tonsillar cancer?

6 A Probably quite serious.

7 Q Pardon me?

8 A It's probably quite -- can be quite serious.

9 Q And you would agree that cancer is a medical  
10 condition; is that right?

11 A Yes.

12 Q And therefore tonsillar cancer is a serious medical  
13 condition; correct?

14 MR. McQUILLAN: Objection. Calls for a legal  
15 conclusion.

16 Q Go ahead and answer.

17 A From a medical standpoint, I'm not saying a legal  
18 standpoint, but from a medical standpoint, it is a  
19 serious medical problem that needs to be addressed.

20 Q Are there certain characteristics of a palpable  
21 lymph node in the neck that can make it a serious  
22 medical condition?

23 MR. McQUILLAN: Objection. Calls for a legal  
24 conclusion.

25 Q Go ahead and answer.

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1 A There are potential findings on examination that  
2 could increase the likelihood or suspicion of a  
3 malignancy.

4 Q And can you articulate those characteristics for  
5 me?

6 A Well, I think there's a lot more than just the  
7 characteristics. It obviously can be someone's  
8 age, family history, personal history, personal  
9 habits. But then on examination, things such as a  
10 lump in the neck, when it begins, how fast it's  
11 enlarging. Is it painful? Is it mobile? Is it  
12 hard as a rock? Is it soft? Is it subcutaneous?  
13 Is it deep? There's a lot of different factors  
14 that we look at.

15 Q Size? Would the size of the mass be important?

16 A Sure.

17 Q I think you said the texture is important; is that  
18 right?

19 A Yes.

20 Q The location of the mass?

21 A Potentially.

22 Q Correct?

23 A Yes.

24 Q The fact that it's asymmetrical versus symmetrical;  
25 is that right?

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1 A Yes.

2 Q And I think you said there are factors beyond the  
3 actual palpable mass, in other words, what the  
4 doctor feels during the palpation process that  
5 should be considered as well, that includes the age  
6 of the patient; correct?

7 MR. McQUILLAN: Objection to form.

8 Q Go ahead and answer.

9 A Yeah, there's other factors. That's why you need  
10 to do a history and physical examination.

11 Q One of those factors is the patient's age; correct?

12 A Yes.

13 Q And a patient who is above the age of 40 is at a  
14 higher risk for certain types of cancer; correct?

15 A Can be, yes.

16 Q Well, do you know?

17 A There's definitely certain types of cancer that are  
18 higher incidents the older you get.

19 Q And that would include neck cancers; correct?

20 A Yes.

21 Q And what about the patient who has been a smoker  
22 for multiple decades? Is that a risk factor?

23 A Yes.

24 Q And that would be a risk factor for neck and throat  
25 cancer; correct?

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1 A And lung cancer.

2 Q I'm asking about neck and throat cancer.

3 A Can be.

4 Q And if the patient has a history of alcohol use, is  
5 that a risk factor?

6 A Yes.

7 Q Did you understand, sir, in reviewing the records  
8 involving Mr. Franklin that he was above the age of  
9 40?

10 A Yes.

11 Q Did you understand he had been a smoker for many  
12 decades?

13 A Yes.

14 Q Did you understand he had used alcohol?

15 A Yes.

16 Q You understood all of those to be risk factors  
17 making him susceptible or to look for neck or  
18 throat cancer; correct?

19 A It could, yes.

20 Q Did you in preparing your opinions in this case  
21 review the contract between the state of Michigan  
22 and Corizon?

23 A I don't believe I did.

24 Q Did you review the Michigan Department of  
25 Corrections policy directives regarding health

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1 care?

2 A No, I did not have that.

3 Q Did you review Michigan Department of Corrections  
4 procedures for rules on prescription medications?

5 A No.

6 Q Do you have any personal knowledge regarding the  
7 procedure that Michigan Department of Corrections  
8 prisoners must follow in order to get off site  
9 treatment?

10 A I do not know those exact procedures and policies.

11 Q Do you have any personal knowledge regarding the  
12 procedures for the physicians who work for Corizon  
13 in the Michigan Department of Corrections  
14 facilities to --

15 A No.

16 Q -- get off site treatment for the prisoners?

17 A No.

18 Q Do you have any personal knowledge regarding the  
19 scheduling process that's used within the Michigan  
20 Department of Corrections for inmates to get off  
21 site medical testing visits or treatment?

22 A The only thing I saw was in -- I don't have  
23 personal knowledge. The only thing I saw in the  
24 records was the submission of the 407 requests.

25 Q Is that scheduling or is that requesting services,

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1 if you know?

2 A Requesting services from what I understand from the  
3 reports.

4 Q Right. So my question had to do with scheduling of  
5 appointments.

6 A No.

7 Q Do you know any barriers that existed during  
8 August of 2012 through the date Mr. Franklin died  
9 to the Corizon physicians at Carson City from  
10 pushing to expedite off site appointments for  
11 inmates?

12 MR. McQUILLAN: Objection to form.

13 Q You can answer.

14 A I think some of that broke up in that question.  
15 Was it about audits?

16 Q No. Let me say it again. Do you know of any  
17 barriers to Corizon physicians located at Carson  
18 City Correctional facilities during the time period  
19 of August 2012 until Mr. Franklin's death that  
20 prevented them from expediting off site  
21 appointments for inmates?

22 MR. McQUILLAN: Objection to form and  
23 foundation.

24 Q Go ahead and answer.

25 A I don't know of barriers, per se, other than the

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1 routine barriers you see in corrections such as  
2 custody. It depends on who makes the appointments  
3 and how soon specialists can get people in.  
4 There's a whole lot of things that go into  
5 scheduling as in private practice too.

6 Q Do you know of any -- are you guessing or are you  
7 aware of any specific barriers that existed?

8 A Well, the barriers I saw in the report were -- or  
9 the information was sometimes a different 407 had  
10 to be submitted. There was weather delays. There  
11 was custody delays of families knowing what's going  
12 on. Security issues. Those are the barriers that  
13 I reviewed in the report.

14 Q Let me understand. The schedule -- the referral  
15 process was a barrier? Is that one of your things  
16 that you said?

17 A I did not see that really being a barrier in the  
18 report. It seemed like that was taken care of  
19 pretty quick.

20 Q Okay. What were the barriers that you just  
21 identified? You said weather and security?

22 A I saw scheduling -- issues that delayed some of the  
23 appointments were things such as security issues,  
24 weather delays, patient was not prepped for a  
25 procedure at one point, those type of things.

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1 Q Anything else that you saw as a barrier to the  
2 doctors at Carson City Correctional in expediting  
3 off site appointments for inmates?

4 A Not that I'm aware of offhand.

5 Q Do you recall reading in any of the transcripts you  
6 reviewed that the physicians at Carson City  
7 Correctional Facility had the ability to talk to  
8 the scheduler and move appointments? Did you read  
9 that?

10 A I don't recall seeing that.

11 Q You don't?

12 A Not offhand right now, no.

13 Q Did you know, sir, or do you know as you were  
14 preparing your report that physicians who requested  
15 referrals for off site testing and treatment could  
16 do so as a routine request or an urgent request?

17 MR. McQUILLAN: Objection. Form of the  
18 question.

19 Q Go ahead and answer.

20 A I read in some of the depositions and reports that  
21 there were different ways you could request a 407.

22 Q One of them was routine; correct?

23 A Right.

24 Q One was urgent; correct?

25 A Right.

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1 Q Are there any other ways in which a 407 could be  
2 requested or submitted rather?

3 A I don't know.

4 Q Did you in your review of the records, Doctor, see  
5 any 407 request that was done in an urgent fashion?  
6 Yes or no?

7 A I did not see ones that were requested urgent. I  
8 did see a pretty urgent response to those.

9 Q I did not ask you that question. Let me ask it  
10 again. Did you in your review of the records that  
11 were provided to you find any 407s that were  
12 submitted as an urgent request for off site  
13 services or testing?

14 MR. McQUILLAN: Objection. Asked and  
15 answered.

16 Q Yes or no? Go ahead and answer, please.

17 MR. McQUILLAN: Objection. Asked and  
18 answered.

19 Q Go ahead and answer.

20 A From what I recall, the ones I saw were just  
21 ordered routinely.

22 Q Do you have any personal knowledge of the number of  
23 doctors, nurse practitioners, or physician  
24 assistants that worked in Carson City during 2012  
25 to 2014?

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1 A I do not know exactly, no.

2 Q Do you know how many inmates were housed in Carson  
3 City Correctional Facility during 2012 to 2014?

4 A I do not know.

5 Q Have you ever served as a medical director over  
6 facilities the size of Carson City?

7 A I don't know how many inmates are there. So I  
8 can't answer that.

9 MR. McQUILLAN: Objection to foundation.

10 Q What was the largest prison population that you've  
11 been the medical director over?

12 A I've never been medical director over a prison  
13 population.

14 Q What's the largest jail population that you've been  
15 the medical director over?

16 A Vanderburgh County.

17 Q I'm sorry. I did not hear your response.

18 A The Vanderburgh County Detention Center.

19 Q How many inmates?

20 MR. McQUILLAN: Objection. Asked and  
21 answered.

22 Q Is that the one that was five to 700?

23 A Yes.

24 Q Okay. Have you published any peer review articles  
25 on correctional medicine?

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1 A No.

2 Q Have you published any peer review articles on  
3 family medicine?

4 A No.

5 Q Have you published any peer review articles on  
6 family medical care for inmates?

7 A No.

8 Q Have any of the articles that you wrote or co-wrote  
9 been rejected for publication at any point in time?

10 A Many of the articles -- when I was involved in a  
11 clinical research, those are submitted by -- many  
12 of them are submitted by the pharmaceutical  
13 companies, and I don't know if they were rejected  
14 or not. They go to different publication areas.  
15 That, I don't know.

16 Q Have you ever had anybody disagree with any of your  
17 findings that were contained in any of your  
18 published articles?

19 A Not that I ever heard back on.

20 Q Doctor, do you have an opinion as to which is more  
21 scientifically reliable as a source, a patient's  
22 recollection of his or her health or the doctor's  
23 chart?

24 A That's an interesting question. That can vary a  
25 lot from patient to patient.

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1 Q Are you able in this case to determine whether  
2 Keith Franklin was a reliable historian or not?

3 A It would be pure speculation. It would be hard for  
4 me to say for sure if he's reliable or not.

5 Q Do you as a doctor view a patient's recitation of  
6 his or her medical history as accurate?

7 A Once again, a very interesting question that can  
8 vary a whole lot. In corrections, you have to be  
9 very careful what patients tell you. Many times,  
10 they're very inaccurate.

11 Q So you believe that inmates tell you his or her  
12 medical condition is inaccurate more than not?

13 A It all, once again, depends on the patient. I  
14 mean, I try to listen to the patient. Me  
15 personally, when I interview a patient, I try to  
16 listen to their story, try to verify information.  
17 Some people are drug seekers. Some people have  
18 alternative means to tell you something that may or  
19 may not be true. Some people hide information from  
20 you for various reasons. So it can be difficult in  
21 this population sometimes to get accurate  
22 information from the patient.

23 Q What do you do given your work as a medical  
24 director in the medical field to perform research?

25 A Well, it depends on what the question at hand is,

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1 but we actually have them fill out a request for  
2 information form and request information from their  
3 doctor, from their pharmacy, from their hospital  
4 they've been to, wherever. If there's something  
5 significant, we want to know about it. If they  
6 come in and say they've got cancer, and they need  
7 treatment for their cancer, that's a common  
8 answer -- or a common question in a jail is we need  
9 to verify you have cancer, and it's not uncommon  
10 we'll find out there's never ever been any history  
11 of cancer whatsoever. Other times, yeah, we verify  
12 that sure enough they've had cancer therapy five  
13 years ago. So that's a broad question.

14 Q Did you see anything in the records that you  
15 reviewed related to Keith Franklin's medical care  
16 from August 12th -- August 2012 to his date of  
17 death where any of the treaters that were giving  
18 him medical care sought to independently verify his  
19 medical history?

20 A I'm not sure I know what you're trying to refer to.  
21 Are you trying to refer to information prior to him  
22 coming to the DOC in the first place?

23 Q Any of his medical history.

24 A Well, I would --

25 Q Hepatitis C, for example.

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1 A I would presume in most corrections when they get  
2 transferred from one facility to the next, their  
3 medical information goes with them.

4 Q Well, did you see any verified -- or efforts to  
5 verify his medical history beginning in August of  
6 2012 until the date of his death?

7 A I don't recall that offhand.

8 Q If there's no documents to determine or there  
9 wasn't efforts undertaken to determine whether this  
10 report of his medical history was accurate or not,  
11 do you take the patient's statement as accurate?

12 A Well, I mean, personally I try to believe the  
13 patient. If he tells me, he's fine, he has no  
14 health problems, no medical problems, I tend to  
15 want to believe them. If he tells me I've got HIV  
16 or I've got some terrible disease, I want to  
17 confirm what he has had, what his treatment has  
18 been up to date. I want to make sure the person  
19 gets the right care. So once again, it's a big  
20 question, and it depends on the patient.

21 Q Have you ever had a patient report medical history  
22 that differed from what was in the medical chart?

23 A Absolutely.

24 Q What have you done to reconcile what the patient  
25 reported versus what was in the chart?

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1 A Well, if it's a significant disease problem, I'll  
2 -- I may do testing to verify that disease. If he  
3 says he's got this and the record never shows it, I  
4 may say, well, let's check that. If he says he's  
5 got HIV and there's no evidence of ever having  
6 that, let's do a test and let's confirm it. Or  
7 Hepatitis or things we see commonly in the jail. I  
8 want to confirm it.

9 Q Do you as part of your training of medical students  
10 train them on how to chart?

11 A Yes.

12 Q And do you indicate that there are common errors  
13 that occur?

14 A It's common everywhere, yes.

15 Q And is one of the common charting errors that  
16 occurs the transposition of the side of the body  
17 that finding has been made?

18 A That's interesting you say that because I know  
19 that's referred to much in this whole case here.  
20 It's possible that can be done.

21 Q It's a common charting error because the physician  
22 is looking at the patient and the patient's left  
23 side is the physician's right side; correct?

24 A I would not say it's a common charting error. I  
25 would say it's an error that can occur. I don't

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1 see it happen very commonly, thank goodness, but it  
2 can occur. I mean, it's just human --

3 Q Well, you saw testimony in this case from  
4 Dr. Bomber, who is the state medical director for  
5 the Department of Corrections, and testified that  
6 it's a very common charting error.

7 A He mentioned that in his -- yes.

8 Q You saw that in other deposition transcripts;  
9 correct?

10 A Say it again.

11 Q Did you see, beyond Dr. Bomber's testimony, any  
12 other witness in this case whether it was a  
13 defendant or an expert in the case testifying  
14 similarly that right left charting errors are  
15 common?

16 A I don't recall who else said that or where else I  
17 may have seen that. I don't remember.

18 Q Would you disagree with that testimony?

19 MR. McQUILLAN: Objection. Form and  
20 foundation.

21 A I go back to my previous answer. I said it is an  
22 error that can occur. I don't say it's extremely  
23 common, thank goodness.

24 Q Well, that's been your experience in your facility?

25 A It's been my experience in medicine, period.

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1 Q Have you ever transposed left and right in your  
2 charting?

3 A I don't recall. I would never say never, but I  
4 don't remember if I did.

5 Q In rendering your opinions, you had to assume that  
6 what you read in the records were accurate;  
7 correct?

8 A Correct.

9 Q And when I say the records, I'm referring to  
10 everything you looked at but most specifically, the  
11 medical records in this case; correct?

12 A Correct.

13 Q By way of example with regard to the entry from  
14 August 7 of 2012 involving the palpable mass, you  
15 determined in your mind that the charting that was  
16 done on that date was done accurately; correct?

17 A I guess I would ask you what you mean by  
18 accurately.

19 Q You took what was written down to be accurate;  
20 correct?

21 A Oh, that is correct, yes.

22 Q In other words, you assumed that Dr. Bhavsar  
23 accurately recorded which side of Mr. Franklin's  
24 body had the palpable mass; correct?

25 A Correct.

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1 Q Did you see after that date, after August 7 of  
2 2012, multiple medical records where it's reported  
3 that the mass that was being evaluated was  
4 cancerous had been on Mr. Franklin's neck since  
5 August of 2012?

6 A Well, once -- in the records, it essentially states  
7 that Mr. Franklin reported by his history that the  
8 mass -- I guess it was in October of '13 to the  
9 nurse that it had been there for over a year,  
10 15 months or whatever it was, for over a year at  
11 that point. So that was based on his history, not  
12 on anything else.

13 Q Right. And that history was, quote, the mass being  
14 detected in August of 2012; correct?

15 MR. McQUILLAN: Objection to foundation.

16 Q Go ahead and answer.

17 A Well, that would be per Mr. Franklin's comments.

18 Q Correct. Did you disregard Mr. Franklin's reports  
19 in the medical records that followed August 7,  
20 2012?

21 A I'm not quite understanding what you mean. Did I  
22 disregard the records?

23 Q Did you --

24 A I'm not sure I --

25 Q Did you disregard his report that the mass that was

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1 being evaluated in October of 2013 and dates  
2 thereafter had been there since August of 2012?

3 MR. McQUILLAN: Objection. Argumentative.

4 Q Go ahead and answer.

5 A I guess in my opinion from reading the facts in the  
6 records, obviously it's speculation. Once again,  
7 Mr. Franklin may have felt he had some kind of lump  
8 in his neck. Whether it was left or right, I don't  
9 know. But he reflects he thought it was, you know,  
10 the same area back 13 months ago. It may not have  
11 been the same area. Who knows for sure.

12 Q Did you take into account Mr. Franklin's repeated  
13 reports that are contained in multiple medical  
14 records after August of 2012 that the mass had been  
15 there since August 2012? Yes or no?

16 MR. McQUILLAN: Objection to foundation.

17 Q Go ahead and answer.

18 A I can't -- I don't know. Don't know. Obviously  
19 Mr. Franklin came in and out of different  
20 facilities after that point and he was examined on  
21 multiple occasions, and there was no mention and  
22 actually no complaint by Mr. Franklin of any kind  
23 of medical problem or lump in his neck, and it was  
24 never mentioned on any examinations after that  
25 point.

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1 Q Let me rephrase my question. Or let me have the  
2 court reporter read my question back. I want you  
3 to listen carefully, and I want you to answer the  
4 question I've asked you. And if you cannot answer  
5 it, tell me you can't answer it.

6 MS. STAMLER: May I have the question back,  
7 please?

8 (The requested material was read back by the  
9 court reporter.)

10 MR. McQUILLAN: Objection to foundation and  
11 mischaracterizes the evidence.

12 A I took that into account when I reviewed the  
13 information, yes, I took that into account. But  
14 like I mentioned previously, it doesn't match up  
15 with all the other examinations and other  
16 depositions of Dr. Bhavsar or however you pronounce  
17 it, but sure, I took that into consideration.

18 Q In rendering your opinion, you focused in on  
19 Dr. Bhavsar having written a certain side of his  
20 body; correct?

21 A Yes.

22 Q All right. Now --

23 MR. McQUILLAN: While we have a second, just  
24 for the court reporter, this doctor who starts with  
25 a B that we've gotten multiple pronunciations, it's

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1 spelled B-h-a-v-s-a-r.

2 MS. STAMLER: We'll get the spellings at the  
3 end. Okay? We'll be happy to give them to you.  
4 Thank you for that clarification. I'm sure I'm  
5 butchering how to pronounce it.

6 Q Doctor, do you agree that there could be additional  
7 information that may exist beyond the documents  
8 that you reviewed that would alter your opinion in  
9 this case?

10 MR. McQUILLAN: Object to foundation.

11 A I base my opinion on the records I had. If there's  
12 other information, then I do have the ability to  
13 change my report and change my opinion.

14 Q When you were reviewing the documents that you've  
15 listed in your report, did you have any questions  
16 about what you were reviewing as you reviewed them?

17 A I don't think so. I don't recall specific  
18 questions right now.

19 Q Did you, after completing your review of the  
20 records, have any unanswered question?

21 MR. McQUILLAN: Objection to the extent it  
22 seeks to elicit privileged attorney work product or  
23 attorney-client communications.

24 Q Go ahead and answer.

25 A Once again, there's always unanswered questions

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1       that you never know. Did Mr. Franklin tell the  
2       truth? Why did he never complain about his issues  
3       for 13 months? I mean, the common layperson, you  
4       and I, if you had a mass in your neck that was  
5       growing over a period of time, you would go to the  
6       doctor immediately. You wouldn't wait a year and a  
7       half later type thing. So, you know, sure, those  
8       are questions I had.

9       Q Are you familiar with the notion, Dr. Stoltz, that  
10       inmates do not seek medical care because they think  
11       it may delay parole?

12               MR. McQUILLAN: Object to foundation.

13       Q Is that something you're familiar with as a  
14       correctional medicine doctor? Yes or no?

15       A I only take care of jail inmates. So I'm not  
16       really familiar with how prison inmates think  
17       necessarily; although, I saw that in his comments.

18       Q Do you know whether there was any other evidence in  
19       this case regarding that particular topic?

20               MR. McQUILLAN: Objection to form and  
21       foundation.

22       Q Go ahead and answer.

23       A I'm not sure where or what you're talking about,  
24       actually.

25       Q It's fair to say, sir, you don't know anything

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1 about the Michigan Department of Corrections policy  
2 or the Carson City Correctional policy regarding  
3 inmates that are under medical care and how it  
4 might relate to their parole; correct?

5 A Correct.

6 Q Therefore, you can't really render an opinion as to  
7 why a person like Mr. Franklin might not have  
8 sought medical treatment; correct?

9 A I don't know. Correct.

10 Q Did you ever consider, Doctor, in rendering your  
11 opinion that Mr. Franklin may not have sought  
12 medical care for the mass that was on his neck  
13 because Dr. Bhavsar never made a big point about  
14 it?

15 MR. McQUILLAN: Objection to the form and  
16 mischaracterizes the evidence. Foundation.

17 Q Go ahead.

18 A Well, that, I don't know. Sometimes you can tell  
19 patients things. You don't document every word for  
20 word what you tell a patient in the record. So I  
21 don't know what all Dr. Bhavsar told Mr. Franklin,  
22 and I don't know -- don't know. Can't say.

23 Q Right. It's possible, is it not, Doctor, that one  
24 of the reasons Mr. Franklin may not have sought  
25 medical treatment for the mass on his neck for many

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1 months could be because Dr. Bhavsar didn't make it  
2 out to be a big issue; correct?

3 MR. McQUILLAN: Objection to form.

4 Foundation. Mischaracterizes the evidence.

5 Q Go ahead and answer.

6 A Well, I'd say that's speculation. I mean, I can't  
7 speculate that or not. Who knows what he said or  
8 -- he said, who said, what said. I don't know.

9 Q Prior to rendering your opinion in this case, did  
10 you believe you had sufficient information to  
11 render an opinion?

12 A I felt based on the records that I had and the  
13 sequence of events, that I had enough information  
14 to base my opinion on, yes.

15 Q Did you ever request any additional materials from  
16 the defense prior to rendering your opinions?

17 MR. McQUILLAN: To the extent that that seeks  
18 to elicit attorney-client or work product doctrine,  
19 I object to privilege.

20 Q Go ahead and answer.

21 A Say the question again.

22 Q Sure. Did you request any additional materials  
23 from the defense prior to rendering your opinions?

24 MR. McQUILLAN: Same objection.

25 A And, actually, I don't recall. It's been over a

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1 year and a half since I started on that -- a year  
2 or so since I started on this case. I don't  
3 recall.

4 Q Did you consult with anyone other than your lawyer  
5 -- I'm not asking about any conversation you had  
6 with the attorneys. Did you consult with anybody  
7 prior to writing your report?

8 A No.

9 Q Did you consult with anybody while you were writing  
10 your report?

11 A No.

12 Q Did you consult with anybody after you drafted your  
13 report and before you finalized it?

14 A No.

15 Q When you inserted the words deliberate or  
16 deliberately indifferent in your report, where did  
17 you get that language from?

18 MR. McQUILLAN: Objection. Asked and  
19 answered.

20 A I answered that previously.

21 Q I'm sorry. I did not hear your answer.

22 A I said we discussed it, and I answered that  
23 previously.

24 Q Okay. That was based on your years in the  
25 correctional medicine field and being at seminars?

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1 MR. McQUILLAN: Objections. Mischaracterizes  
2 the testimony. The court reporter can read back  
3 the portion where he testified that the language  
4 about deliberate indifference came from plaintiff's  
5 complaint.

6 Q Is that the only place you got that language from,  
7 Doctor?

8 MR. McQUILLAN: Objection to form.

9 Q Go ahead and answer.

10 A That's where I got it from, the complaint.

11 Q It's your testimony in this case, sir, that you had  
12 not heard the term or read the term deliberate  
13 indifference prior to seeing the complaint in this  
14 case?

15 MR. McQUILLAN: Objection. Mischaracterizes  
16 the witness' testimony.

17 Q I'm asking the question. Have you seen that phrase  
18 prior to seeing the plaintiff's complaint in this  
19 case?

20 A Yes, and we had a long discussion about that  
21 earlier.

22 Q So you have seen the term deliberately indifferent  
23 in materials other than the complaint in this case  
24 and you've seen them in connection with your work  
25 as a correctional medicine doctor; correct?

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1 MR. McQUILLAN: Objection. Compound question.  
2 Form.

3 Q Can you answer the question?

4 A Yes, I've seen that term before.

5 Q In your opinion, did Keith Franklin have any  
6 serious medical conditions during the time period  
7 of August 2012 until his death in 2014?

8 MR. McQUILLAN: Objection. Calls for a legal  
9 conclusion.

10 Q Go ahead and answer.

11 A Well, he had a significant medical condition with  
12 his tonsillar cancer.

13 Q Anything else?

14 A Well, it seemed to be connected -- his other issues  
15 tend to be connected to that.

16 Q Such as?

17 A Such as having to go to therapy -- chemotherapy,  
18 getting sick after chemotherapy, possible sepsis  
19 and death.

20 Q To the extent your report contains quotes from  
21 medical records, you quoted the report accurately;  
22 correct?

23 A I hope so.

24 Q I want you to go to page 3 of your report,  
25 paragraph 4, and you wrote in part in the first

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1 paragraph of the Summary of Findings the following:  
2 And read along with me, please as I read this into  
3 the record.

4 Quote, ? palpable lymph node 2 to 3  
5 centimeters below -- and then in all caps the  
6 words -- LEFT angle of the jaw, closed quote. Did  
7 I read that correctly?

8 A Yes.

9 Q And that, sir, was a quote you took from the  
10 August 7, 2012, medical record; is that correct?

11 A Yes.

12 MS. STAMLER: Court reporter, would you kindly  
13 locate Exhibit 3?

14 A Actually, when we get to a good stopping point, I  
15 need to take a break myself.

16 MS. STAMLER: Okay. No problem. We'll go off  
17 the record.

18 (A brief recess was taken.)

19 (Exhibit 3 was handed to the witness.)

20 Q We're back on the record. Dr. Stoltz, you  
21 understand you're still under oath?

22 A Yes.

23 Q Did you discuss your testimony while we were on a  
24 break?

25 A No.

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1 Q The court reporter has handed you Exhibit 3 to your  
2 deposition. Have you seen this document before?

3 A I don't 100 percent recall. There's so many  
4 records.

5 Q Do you, in reviewing this record, recall the  
6 history that's reported on the intake in part  
7 includes alcohol and drug screening?

8 A On the intake history you said?

9 Q Yes.

10 A Yes.

11 Q And this indicates that Mr. Franklin drank beer  
12 twice weekly, three drinks?

13 A Correct.

14 Q That he was a smoker of one pack for 30 years?

15 A Yes.

16 Q You noted his date of birth on this record as being  
17 November 3 of '64?

18 A Yes.

19 Q Placing him above the age of 40?

20 A Yes.

21 Q Is that right?

22 A Correct.

23 Q So it's fair to say, Dr. Stoltz, that Mr. Franklin  
24 had risk factors for throat cancer, did he not?

25 A Yes.

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1 Q That being his beer consumption, his smoking, and  
2 his age being above the age of 40; correct?

3 A Correct.

4 Q Did you detect any family history of cancer in  
5 reviewing the records?

6 A That, I do not recall offhand.

7 MR. McQUILLAN: I'm going to object to the  
8 form. Patti, are you referring to just Exhibit 3  
9 or the entire record?

10 Q Oh, no, the entire record. That one wasn't just  
11 for Exhibit 3. Do you ever remember seeing any  
12 record of a family history of cancer?

13 A I don't recall that offhand, no.

14 Q All right. Would that -- that I think you  
15 testified would have been part of a risk factor;  
16 correct?

17 A Yes.

18 Q All right. I want to now go to Exhibit 4 if the  
19 court reporter will be kind enough to hand that to  
20 the witness.

21 (Exhibit 4 was handed to the witness.)

22 A Okay.

23 Q Do you have that, sir?

24 A Yes.

25 Q On this form -- this is a provider visit dated

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1 August 7 of 2012; is that correct?

2 A Yes.

3 Q Have you seen this document before?

4 A Yes.

5 Q And this is the provider that Mr. Franklin had with  
6 Dr. Bhavsar on August 7, 2012; correct?

7 A Correct.

8 Q And on this first page of the document, Exhibit 4,  
9 it indicates Mr. Franklin's age is 47 years old;  
10 correct?

11 A Yes.

12 Q It indicates a smoking history; correct? Page 2 of  
13 the report.

14 A Oh, I thought we were on page 1. Yeah, page 2  
15 does.

16 Q Page 2 also notes that he has a history of alcohol  
17 use; correct?

18 A Yes.

19 Q So at least according to Dr. Bhavsar's report, he  
20 recorded several risk factors for neck cancer;  
21 correct?

22 A Those could be, yes.

23 Q Now I want to turn your attention to page 3 of  
24 Exhibit 4, the section that's labeled Physical  
25 Exam. Do you see that section?

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1 A Yes.

2 Q And do you see that there are multiple areas for  
3 physical exam. First of being Constitutional:  
4 Head/face, eyes, ears, nose, throat, mouth.

5 A Yes.

6 Q Right?

7 A Yes.

8 Q On the section that's head/face, eyes, ears, nose,  
9 mouth, throat, is that frequently abbreviated to  
10 the capital letters of HEENT?

11 A Yes.

12 Q And that is separate and distinct from, at least on  
13 this form for the physical exam, neck and thyroid;  
14 correct?

15 A They separate it separately, yes.

16 Q Okay. All right. And on this form I want to read  
17 into the record what it states. "Inspection  
18 reveals symmetry. No thyromegaly or thyroid  
19 nodules detected. No cervical adenopathy.  
20 Comments: ? palpable lymph node 2-3 cm below L  
21 angle of jaw." Did I read that correctly?

22 A Yes.

23 Q That is a verbatim quote of what's in the medical  
24 record on that section marked Neck/Thyroid;  
25 correct?

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1 A Yes.

2 Q Does the words in all capitals LEFT appear in that  
3 entry? Yes or no?

4 A No.

5 Q You in your report misquoted the medical record;  
6 correct?

7 A No.

8 Q You don't know?

9 A No, I did not misquote it, no. I put the record  
10 l-e-f-t, left to make -- make -- actually, I should  
11 have added brackets. Probably left -- forgot to  
12 leave the brackets off, but it showed L as left.  
13 To make it clear --

14 Q Well, the word left -- you inserted the word left  
15 into the quote. Yes or no?

16 A Yes, I did.

17 Q Are you able to tell, Dr. Stoltz, from the entry  
18 that Mr. -- Dr. Bhavsar made on August 7 of 2012  
19 texture of the palpable lymph node?

20 A No.

21 Q Are you able to determine whether it is mobile or  
22 fit?

23 A No.

24 Q Are you able to, from the entry that was made,  
25 determine the size?

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1 A No.

2 Q Are you able to determine the shape?

3 A No.

4 Q You're able to determine, are you not, that it was  
5 asymmetrical since it's listed for only being on  
6 one side; correct?

7 MR. McQUILLAN: Object to foundation.

8 A It appears so.

9 Q Go ahead and answer.

10 A It appears that way, yes.

11 Q Are there any other hallmarks of a palpable mass  
12 that should have been reported in this record that  
13 we haven't covered?

14 MR. McQUILLAN: Objection to foundation.

15 Q Go ahead and answer.

16 MR. McQUILLAN: Oh, also it mischaracterizes  
17 the record. It says palpable lymph node. It does  
18 not say palpable mass.

19 Q Doctor, do you think there's a distinction between  
20 a palpable lymph node and a palpable mass?

21 A It's hard to say. Unless you're the doctor  
22 actually examining the person at the time, it's  
23 hard to say.

24 Q So it's fair to say that a palpable lymph node  
25 could be a palpable mass; is that right?

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1 A It could be either one.

2 Q You record a palpable lymph node. I think you've  
3 testified that there's no size noted here, correct,  
4 from your standpoint?

5 A Correct, correct.

6 Q There's no record of what the skin looked like  
7 around the lymph node area; correct?

8 A Correct.

9 Q There's no record of whether the skin was warm to  
10 the touch; correct?

11 A Correct.

12 Q Now, you indicated in your note that Mr. Franklin  
13 was seen at the Reception and Guidance Center with  
14 nursing staff on day one, which would have been  
15 August 6th; correct?

16 A Yes.

17 Q And then you said a "bubble" followup visit was  
18 done the next day. Is that what you wrote?

19 A Yes.

20 Q Where did you get that term bubble from?

21 A Somewhere in the record that was -- I didn't make  
22 that term up. It was somewhere in the record. I  
23 don't remember where.

24 Q Does it show anywhere on this form of August 7,  
25 2012, that the visit he had on that date was a

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1 bubble visit?

2 A I don't see it on this form, but I -- that's a term  
3 I've not heard before. That's why I put it in  
4 quotes there. They called it a bubble visit.

5 Q And are you confident the bubble visit happened on  
6 August 7 of 2012?

7 A That's where I recall it from.

8 Q It says that a complete physical examination --  
9 this is in your report on page 3 -- done by  
10 Dr. Bhavsar on August 7 of 2012 pertaining to the  
11 complaint. What complaint are you referring to  
12 there?

13 A Well, I was referring to the plaintiff's complaint  
14 about being a mass in his neck.

15 Q Okay. Now, you indicate that Mr. Franklin was  
16 scheduled to see Dr. Bhavsar for a clearance  
17 physical exam on August 21 of 2012; is that right?

18 A Yes.

19 Q All right. Now, I want to turn your attention to  
20 the last part of this Exhibit 4 and ask you if  
21 there's anything that you saw in the assessment or  
22 plan indicating any followup he intended to do on  
23 the palpable lymph node?

24 A Well, I see under plan, number 2, medical provider,  
25 MP, followup at med clearance or as needed.

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1 Q And where does that address the palpable lymph  
2 node?

3 A Well, it does not specifically say that.

4 Q Do you recall Dr. Bhavsar's testimony regarding  
5 whether he created a plan for followup on palpable  
6 lymph nodes?

7 A I don't believe he had a specific plan documented.

8 Q I now want to turn your attention to Exhibit 5, if  
9 the court reporter would hand it to the witness,  
10 please.

11 (Exhibit 5 was handed to the witness.)

12 A Yes.

13 Q Dr. Stoltz, this is a representation, a photograph  
14 with writing -- or typing on it, if you will, that  
15 says lymph nodes of the head and neck. Do you see  
16 that?

17 A Yes.

18 Q Have you seen this document before?

19 A No.

20 MR. McQUILLAN: I'm going to object to  
21 foundation.

22 MS. STAMLER: I'm sorry?

23 MR. McQUILLAN: I'm objecting to the  
24 foundation of the exhibit. I just want to note it  
25 for the record.

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1 Q It was an exhibit to other depositions. So are you  
2 saying you never saw the exhibits that may have  
3 contained this document?

4 MR. McQUILLAN: Is that a question for me or  
5 for the witness.

6 Q I'm asking Dr. Stoltz if he ever saw this as part  
7 of an exhibit to a deposition?

8 A No.

9 Q Have you seen representations of the lymph nodes  
10 that appear in the head and neck during your  
11 medical career?

12 A Sure.

13 Q Is this an accurate representation of the lymph  
14 nodes of the head and neck?

15 A Yes.

16 Q Are you, sir, able to tell me based upon the  
17 medical record of August 7, 2012, where the  
18 palpable lymph node was located on this exhibit?

19 MR. McQUILLAN: Objection to form. You're  
20 referring to two exhibits and then you said this  
21 exhibit. Could you clarify?

22 Q Can you tell me based on the entry made on  
23 August 7, 2012, where on Exhibit 5 the palpable  
24 lymph node was located?

25 A Well, it would actually be two to three centimeters

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1 below the left angle of the jaw. So it would be  
2 below the ear, back where the angle of the jaw is  
3 and be back in that area somewhere. Although it  
4 did not say it was for sure a lymph node. It was a  
5 questionable palpable lymph node.

6 Q So understanding your testimony, is that closest to  
7 the line marked tonsillar?

8 A That's the only tonsillar line near that area you  
9 have marked there. Actually, the -- this is the  
10 right side of the neck on this picture you have.

11 Q Right. But we transposed the image and put it on  
12 the left side. That would be closest to the  
13 tonsillar lymph nodes depicted there?

14 A Probably in the general ballpark area.

15 Q Now I want to turn your attention to Exhibit 6 if  
16 the court reporter would be kind enough to hand  
17 that to you, Dr. Stoltz.

18 (Exhibit 6 was marked for identification.)

19 A Okay.

20 Q Take a moment, if you would, to review it and let  
21 me know when you're done. Have you finished  
22 reviewing?

23 A Yes.

24 Q All right. Now, Exhibit 6 is the provider visit  
25 that Mr. Franklin had with Dr. Bhavsar on August 21

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1 of 2012; correct?

2 A Yes.

3 Q And you indicated that the palpable lesion was no  
4 longer prevalent. Is that what you wrote in your  
5 report?

6 A I wrote in the report that Dr. Bhavsar testified  
7 that the neck lesion was no longer present.

8 Q Does that say that in your report?

9 A It says it in my report, yes.

10 Q Let's look at Exhibit 6. Do you see any evidence  
11 on page 2 on the section marked physical exam that  
12 a physical exam of the neck was performed?

13 A No.

14 Q In fact, under the physical exam section it reads  
15 in part, "Comments: Complete physical examination  
16 performed on 8-7-12." Correct?

17 A That's what it states.

18 Q Pardon me?

19 A That's what it states.

20 Q And if you turn to the prior page under the section  
21 marked HEENT, that is the section, sir, that  
22 pertains to the section of head, eyes, ears, nose,  
23 mouth, and throat; correct?

24 A Yes.

25 Q It does not pertain to the neck or thyroid area,

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1 does it?

2 A No, but commonly in medical documentation, you put  
3 that under HEENT.

4 Q Well, sir, looking at Exhibit 4 -- I'm not asking  
5 you what commonly is done. What did Dr. Bhavsar do  
6 on August 7 of 2012?

7 A He separated it out there.

8 Q Page 3.

9 A He separated it out there. Typically, you will  
10 separate it out if you have a finding. That's most  
11 likely why he did it, I would speculate.

12 Q You're speculating, aren't you?

13 A I don't know what his normal practice is. That's  
14 what I would do. I would separate it out if I find  
15 a finding.

16 Q I'm asking you what Dr. Bhavsar did on August 7.

17 A He separated it out.

18 MR. McQUILLAN: I'm going to object to  
19 foundation to the extent that Dr. Stoltz wasn't in  
20 the room at the time.

21 MS. STAMLER: I'm sorry. I really didn't hear  
22 your objection, Kevin.

23 MR. McQUILLAN: Foundation. That's all.

24 Q Okay. Doctor, you have no proof as it relates to  
25 what's in Exhibit 6 that Dr. Bhavsar wrote anything

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1 in Exhibit 6 reflecting an examination of  
2 Mr. Franklin's neck; correct?

3 A Correct.

4 Q And you read both volumes of Dr. Bhavsar's  
5 testimony in this case, didn't you?

6 A Yes.

7 Q And you recall, don't you, that Dr. Bhavsar had no  
8 independent memory of Keith Franklin; correct?

9 A That's what I recall, yes.

10 Q And he had no independent memory of performing any  
11 examination of his neck on August 21, 2012;  
12 correct?

13 A Right.

14 Q I did not hear your answer.

15 A I said right.

16 Q Did you review the interim transfer summary that  
17 was received by Carson City Correctional Facility  
18 when Mr. Franklin was transferred there?

19 A I don't recall offhand right now. It should have  
20 been with the -- I hope with the MDOC medical  
21 records.

22 Q Yes.

23 MS. STALER: Court Reporter, would you please  
24 hand the witness Exhibit 7, please.

25

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1 (Exhibit 7 was handed to the witness.)

2 A Okay.

3 Q It's two pages. The first page is a summary of  
4 information that was sent Mr. Franklin to Carson  
5 City Correctional Facility; correct?

6 A Yes.

7 Q Page 2 is an intake form that appears to have been  
8 completed by a nurse on August 31, 2012. Did you  
9 review that?

10 A Yes.

11 Q Did you see any evidence on this form that the  
12 nurse did a physical examination of Mr. Franklin?

13 A Only took a history, which he denied any medical  
14 problems at that time.

15 Q Where did you see that there's a denial of medical  
16 history on --

17 A Page 1 under subjective, line 2.

18 Q That's not a medical history that she took. That's  
19 a summary that came from the transferring facility.  
20 I'm asking you about page 2 of Exhibit 7, sir.

21 A Well, I don't see that on page 2. I was talking  
22 about page 1.

23 Q I understand. That isn't the intake form. That is  
24 a summary.

25 A Well, under subjective, it says, patient has no

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1 medical, behavior health or dental complaint. I  
2 would presume that's something they're asking the  
3 patient.

4 Q Do you know whether she asked him or whether this  
5 was the summary of the information that came from  
6 the transferring facility?

7 A I don't know. Usually subjective means what comes  
8 from the patient. That's what I would assume.  
9 That's the way medical --

10 Q You do not know where that information came from,  
11 do you?

12 A I can only look at what the record documents here.

13 Q And what's it called?

14 A I'm sorry. What?

15 Q What is the first page of Exhibit 7 called?

16 A It's the receiving transfer summary -- Intrasystem  
17 Transfer Summary - Receiving Facility.

18 Q And you don't know how this information was placed  
19 into the record or where it came from; correct?

20 A Not 100 percent no, I don't. I don't know exactly  
21 how it's done.

22 Q Turning to page 2 intake form dated August 31,  
23 2012. Is there any reference to a physical  
24 examination being performed on that date?

25 A Just vital signs.

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1 Q The neck of Mr. Franklin was not examined on that  
2 date; correct?

3 MR. McQUILLAN: Object to foundation.

4 A No documentation of that here.

5 Q Turning to Exhibit 8 if the court reporter would  
6 please hand that to the witness.

7 (Exhibit 8 was handed to the witness.)

8 A Okay.

9 Q This is a chronic care visit dated November 16,  
10 2012. And it appears to have been authored by a  
11 physician assistant with the last name of  
12 Filsinger. That's page -- the first two pages. I  
13 want to start there. Did you review this chronic  
14 care visit form?

15 A Yes.

16 Q And did you indicate that in your report the  
17 physician assistant did a physical exam of  
18 Mr. Franklin?

19 A Yes.

20 Q Did you indicate whether the physician assistant  
21 actually did a physical exam of Mr. Franklin's  
22 neck?

23 A In my report I said there's no mention of any lymph  
24 node or neck issues.

25 Q What I want to ask you now looking at Exhibit 8,

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1 page 2, did the physician's assistant physically  
2 examine Mr. Franklin's neck as it relates to what  
3 he reported in his report?

4 A Not that is documented specifically.

5 Q There's no reference to checking his neck; correct?

6 A Correct.

7 Q Turning to the next page of Exhibit 8, this is a  
8 chronic care visit dated June 6th of 2013. This is  
9 a three-page report, also generated by the  
10 physician assistant Filsinger; correct?

11 A Yes.

12 Q And you indicated in your report that on this date,  
13 there was no mention of neck problems; is that  
14 right?

15 A Yes.

16 Q Did you determine in reviewing this report dated  
17 June 6th, 2013, whether the physician assistant  
18 examined Mr. Franklin's neck?

19 A Well, I would want to clarify actually from the  
20 previous exam and this exam both. In medical  
21 practice, whether it be in an office practice on  
22 the outside or inside a jail situation or prison,  
23 you -- you actually base your examination on  
24 complaints of the patient. And if you see the  
25 patient says he has no problems or concerns, then

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1       you see him for his general chronic care visit,  
2       which is for his infectious disease hepatitis C and  
3       his hand deformity or whatever. You don't -- you  
4       may not examine the neck at all. There's no reason  
5       to examine the neck if he has no complaints of any  
6       neck issues. You focus your examination on  
7       complaints. You don't do a full head to toe  
8       complete physical exam. You don't see a groin on  
9       here. You don't see an anal exam on here. You  
10      don't do those things unless there's complaints in  
11      regards to that area or if you're seeing them for  
12      that chronic care problem.

13    Q   Thank you, Doctor. I didn't ask you all that, but  
14        I appreciate your explanation. Now let's go back  
15        since you brought that up.

16    A   Sure.

17    Q   On November 16th, 2012, he was there for a chronic  
18        care visit; correct?

19    A   Correct.

20    Q   A physical examination was performed, wasn't it?

21    A   Yes.

22    Q   Respiratory was checked. Cardiovascular was  
23        checked. Abdomen was checked. His musculoskeletal  
24        was checked. Psychiatric was checked, wasn't it?

25    A   Yes.

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1 Q No check of the neck; correct?

2 A No.

3 Q Turning to June 2013, a physical exam was  
4 performed, was it not?

5 A Yes.

6 Q And although he was there for a chronic care visit,  
7 a physical exam was performed, was it not?

8 A Yeah. I would call it a brief physical exam, but  
9 yes.

10 Q Well, the lumbar spine was evaluated, wasn't it?

11 A Yes. And the reason is because there was a  
12 specific complaint. The pain is located in his low  
13 back and is not radiating to his legs. So they  
14 actually did a more extensive exam because that was  
15 part of his history or present illness when he  
16 presented that day.

17 Q The respiratory system was examined; correct?

18 A Yes.

19 Q His cardiovascular was checked; correct?

20 A Yes.

21 Q His abdomen was checked; correct?

22 A Yes. And I'll be willing to bet that that's part  
23 of the standard -- every time they come in for a  
24 chronic care visit, most likely they probably get  
25 the general systems checked.

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1 Q Did I ask you that, Doctor? I'm not asking you to  
2 speculate. I would really appreciate it if you  
3 would simply answer the question I'm posing to you.

4 MR. McQUILLAN: And Counsel, we'd appreciate  
5 it if you refrain --

6 MS. STAMLER: We will get through this a lot  
7 quicker.

8 MR. McQUILLAN: We would appreciate it --

9 MS. STAMLER: I did not ask you to state -- I  
10 did not ask you to take a bet on whether this was  
11 or wasn't a standard examination.

12 MR. McQUILLAN: And we would --

13 MS. STAMLER: You don't know that and you are  
14 speculating; correct?

15 MR. McQUILLAN: We would appreciate it if you  
16 would refrain from your argumentative tone.

17 MS. STAMLER: I'm not argumentative. I'm  
18 trying to get him to answer my questions.

19 Q Doctor, you do not know if this is a standard  
20 routine physical exam or not, do you?

21 MR. McQUILLAN: The record will reflect that  
22 plaintiff's counsel is screaming on the phone  
23 currently.

24 MS. STAMLER: I am not screaming. That is  
25 absurd, Kevin, and you know it.

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1 Q Doctor, can you answer my question?

2 A I can say I'm not probably 100 percent speculating  
3 because it's the same thing listed on each one of  
4 these. It's probably a medical electronic record.  
5 Each one of these things are listed on the record  
6 at each one of the visits because it's the same  
7 thing both times, unless there's a specific  
8 complaint.

9 Q You're speculating; correct?

10 A No.

11 Q So you know definitively that's the standard that's  
12 done every time; correct?

13 A I see that in the record. It speaks for itself.  
14 That's all I can say.

15 Q All right. Let's go to the next portion of  
16 Exhibit 8. We're now at August 6th of 2013. This  
17 is a provider visit scheduled. His chief complaint  
18 is infectious disease; is that right?

19 A Yes.

20 Q Physical exam was performed; correct?

21 A Yes.

22 Q Was there a review of systems done on this date?

23 A Yes.

24 Q Has there been a review of systems done on the  
25 prior chronic care visits?

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1 A Well, this was not a chronic care visit. It  
2 doesn't say.

3 Q Had there been a review of systems done on  
4 November 16, 2012?

5 A Yes.

6 Q That was a chronic care visit?

7 A Yes.

8 Q So all chronic care visit forms are not identical,  
9 are they?

10 MR. McQUILLAN: Objection to foundation. Go  
11 ahead, Doctor.

12 A The way I read the visits here, the first two were  
13 chronic care visits. The last one was not a  
14 chronic care visit. It was a provider visit  
15 scheduled.

16 Q And the chronic care visits that was the first of  
17 the two that we went over also did a review of  
18 systems, didn't it?

19 A Yes.

20 Q The second one did not; correct?

21 A No, the second one did too. All three of them did.

22 Q Did a review of systems?

23 A On the June 6th, 2013, visit? Page 1 down at the  
24 bottom, review of systems.

25 Q Okay.

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1 MR. McQUILLAN: Doctor, for the record, why  
2 don't you state which page of the entire exhibit it  
3 is since we're dealing with several medical records  
4 here.

5 THE WITNESS: Page 3 of Exhibit 8.

6 MR. McQUILLAN: Thank you.

7 Q Doctor, on August 6th of 2013, was a physical exam  
8 performed? Yes or no?

9 A August 6th of 2013, yes.

10 Q You see that recorded on the form; is that right?

11 A Yes.

12 Q And does this physical exam form in terms of the  
13 top look identical to the prior physical exam forms  
14 that are part of Exhibit 8?

15 A Yes.

16 Q So were the extremities physically examined on  
17 November 16th of 2012 and June 6th of 2013 as far  
18 as the physical exam?

19 A Musculoskeletal.

20 Q So it's written differently, isn't it?

21 A It's the same area you're covering, I guess. There  
22 was a specific complaint on the one on June 6,  
23 2013, of back problems. So it goes into more  
24 detail in the musculoskeletal section of the back  
25 and spine evaluation.

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1 Q Is the back an extremity?

2 A You usually include it in the musculoskeletal  
3 system, the spine, the extremities.

4 Q Pardon me?

5 A The back is included in the musculoskeletal system.

6 Q That wasn't my question. Is the back an extremity?

7 MR. McQUILLAN: Asked and answered.

8 Q Is that a yes, it is an extremity?

9 A It's a part of the musculoskeletal evaluation.

10 Q So is that a yes?

11 A The spine is not an extremity.

12 Q Looking at the physical exam that was performed on  
13 August 6 of 2013, was Mr. Franklin's neck examined?  
14 Yes or no?

15 A No.

16 Q Now I'm turning to Exhibit 9. Let me know when you  
17 have that in front of you.

18 (Exhibit 9 was handed to the witness.)

19 A Okay.

20 Q All I want you to do at this point is look at the  
21 first two pages of Exhibit 9 and let me know when  
22 you're done reviewing it.

23 A Okay.

24 Q Are you finished looking at the first two pages of  
25 Exhibit 9?

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1 A Yes.

2 Q Have you seen this document before?

3 A Yes.

4 Q And you've noted it in your report; correct?

5 A Yes.

6 Q And you sort of paraphrase her entry as being a  
7 mass in his right neck that was five to six times  
8 larger than a year ago. That's what you wrote;  
9 correct?

10 A Correct.

11 Q That's not really what she wrote in her report, did  
12 she? She wrote in part, noted patient has a large  
13 firm nodule on R side of neck. States he had it  
14 evaluated one year ago in August and it is now 5-6  
15 times larger. Did I read that portion of that  
16 entry correct?

17 A Yes.

18 Q You omitted that he had reported it and it had been  
19 evaluated one year prior in August which would have  
20 made it August of 2012; correct?

21 A Yes.

22 Q And he's reporting it's now five to six times  
23 larger; correct?

24 A That's what the record states.

25 Q Did it occur to you, Doctor, that it was possible

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1       upon reading Dr. -- I'm sorry, nurse Harold's entry  
2       that Dr. Bhavsar had placed the mass that he  
3       detected in August of 2012 on the wrong side of  
4       Mr. Franklin's neck?

5     A   That is speculation. It's he say, her say, who  
6       say, what say.

7     Q   It's not speculation if you take as being accurate  
8       Mr. Franklin's report to Nurse Hearld; correct?

9               MR. McQUILLAN: Objection. Foundation.

10    Q   Go ahead and answer.

11    A   Repeat the question, please.

12               MS. STAMLER: May I have the question read  
13       back?

14               (The requested material was read back by the  
15       court reporter.)

16               MR. McQUILLAN: Same objection.

17    A   I find it speculation in the fact that if he's had  
18       -- like I said previously in the deposition here,  
19       if he had this mass progressively enlarged in a  
20       years plus time period and has never been mentioned  
21       in any other visits and no complaints of it, it  
22       seems odd to me that all of a sudden he would bring  
23       it up at this point.

24    Q   Did he even bring it up to the nurse at this point  
25       or not?

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1 A I don't know.

2 Q Well, let's look at the record. What's the  
3 presenting chief complaint noted on the first page  
4 of Exhibit 9?

5 A Genitourinary/renal.

6 Q He was not there with a complaint about his neck;  
7 correct?

8 A Well, under the comments under objective, I don't  
9 know if he brought it up or if she found that. I  
10 don't see a physical exam saying that -- under the  
11 objective, it doesn't say examination prior to the  
12 comments. I don't know who brought that up. I  
13 don't know.

14 Q Well, he was there with a chief complaint noted,  
15 not the neck; correct?

16 A Well, I have patients all the time in my jail come  
17 in with one complaint, and then the next thing you  
18 know, they have ten more when they come and sit on  
19 the exam table. All the time. That happened to me  
20 yesterday.

21 Q I'm not asking about what you have experienced in  
22 the jail that you're working in. I'm asking what's  
23 in this record, Doctor. I'm not asking you to  
24 speculate what might have happened. What does the  
25 record here state? That his chief complaint was

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1 not about his neck; correct?

2 MR. McQUILLAN: Objection. The record speaks  
3 for itself.

4 Q Go ahead and answer.

5 A I already answered that.

6 Q Did you read as part of the entry that he had not  
7 asked for treatment because he was concerned it  
8 would hold up his parole?

9 A Yes.

10 Q When you read that statement in tandem with the  
11 fact that it wasn't observed that as a chief  
12 complaint that it's possible that the nurse  
13 detected this and not Mr. Franklin complained about  
14 it?

15 MR. McQUILLAN: Objection to foundation.

16 Q Go ahead and answer.

17 A You could speculate that.

18 Q Would you, Doctor, consider the finding of a large  
19 firm nodule on the side of a neck of a patient who  
20 has a history of smoking and drinking and had it  
21 there one year prior and is now five to six times  
22 larger a serious medical condition?

23 MR. McQUILLAN: Objection. Calls for a legal  
24 conclusion. Also mischaracterizes the evidence.  
25 Foundation.

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1 Q Go ahead and answer.

2 A Well, if a patient came in to me and said he had a  
3 lump on his neck that had been there for a year and  
4 it progressively enlarged and I felt it, I would  
5 probably be concerned that something is going on  
6 here that needs to be investigated.

7 Q You wouldn't ignore it, would you?

8 A No.

9 Q Would you immediately seek an x-ray?

10 A It all would depend on exactly what it felt like to  
11 me. I would have to put all the history together,  
12 but I might.

13 Q Well, based on what's in this report of  
14 October 9th, 2013, a large firm nodule on the right  
15 side of his neck and evaluated one year prior and  
16 it's now five to six times larger, would you  
17 immediately seek an x-ray?

18 A Something could be done looking for a soft tissue  
19 mass. It could be done, yes.

20 Q So you would follow the order of seeking an x-ray;  
21 is that right?

22 A I think it's a reasonable thing, especially in many  
23 of these places have x-ray on site. I don't know  
24 if they do or not there. I don't recall. But if  
25 there's x-ray on site, that'd be a reasonable thing

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1 to do.

2 Q If it's on site, would you expect it to have been  
3 done that day or the next day?

4 A Well, within a few days.

5 Q What's a few? Three?

6 A I mean, it depends on -- I don't know how it's set  
7 up there. It depends on when the x-ray tech is on  
8 site. I mean, some places they're only there once  
9 a week. I don't know what the setup is there. But  
10 within a reasonable time frame. Within a week or  
11 two. I wouldn't wait two months to get an x-ray.

12 Q So you're perfectly comfortable with having an  
13 x-ray done on October 22 of 2013 when this lump  
14 that had been there for, as reported, one year  
15 prior and it's now five to six times larger. Is  
16 that your testimony?

17 MR. McQUILLAN: Objection to foundation. You  
18 can answer.

19 A Yeah, I would say if it's been there for a year,  
20 two or three weeks is not going to make a big huge  
21 difference in how fast you get it evaluated.

22 Q Did you ever hear, Doctor, the medical opinion as  
23 to whether the sooner you treat cancer, the better  
24 the prognosis?

25 A Sure.

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1 Q The sooner you diagnose cancer, the sooner you can  
2 begin treating cancer?

3 MR. McQUILLAN: Objection. That seems to be  
4 outside this witness' expertise. You've already  
5 asked him and he's already answered that he's not  
6 an oncologist.

7 Q Are you following your lawyer's advice and you're  
8 not going to answer that question? You can't  
9 answer that?

10 MR. McQUILLAN: I just stated an objection. I  
11 didn't give any instruction either way. Doctor, if  
12 you want to answer it, you can go right ahead.

13 A What was the question again?

14 MS. STAMLER: Can I have the question, please?

15 (The requested material was read back by the  
16 court reporter.)

17 A That's probably true of any condition. The sooner  
18 you diagnose diabetes, the sooner you can treat it.

19 Q I'm not -- I would really appreciate it if you  
20 would confine your responses to the question I'm  
21 posing. I'm not asking about diabetes. I'm asking  
22 about cancer. Is your answer yes, the sooner you  
23 diagnose it, the sooner you can treat it?

24 A I would say the sooner you diagnose any condition  
25 is -- you can take action on it as soon as you

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1       diagnose.

2       Q   And that would include cancer --

3       A   That would include cancer, yes.

4       Q   -- correct? I want to turn your attention to the  
5       next page of Exhibit 9 entitled X-Ray Requisition.

6       Do you see that?

7       A   Yes.

8       Q   Do you see that Dr. Holmes did not order an x-ray  
9       until October 16 of 2013; is that right?

10      A   It appears that way.

11      Q   Do you know that the x-ray was not performed until  
12      October 22nd of 2013; correct?

13      A   Yes.

14      Q   Do you see anywhere in the ordering of the x-ray by  
15      Dr. Holmes that he requested that this be done  
16      urgently?

17      A   No.

18      Q   Continuing to the next page, which is an  
19      administrative note, directing your attention to  
20      when the x-ray was going to be taking place, it  
21      confirms that it is going to occur on October 22,  
22      2013; correct?

23      A   Yes.

24      Q   This is how many days after Nurse Hearld documented  
25      the mass?

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1 A About two weeks.

2 Q And that in your opinion, Doctor, as a correctional  
3 medical expert is acceptable; is that right?

4 A Well, once again, I would -- mentioned previously  
5 this lesion had been there for -- reportedly for  
6 15 months. Two weeks is not going to make a huge  
7 difference in anything if it's been there for over  
8 a year.

9 Q Now, would you agree or disagree with the  
10 proposition that the fact that the mass was in  
11 there for over a year might require that it be  
12 addressed more urgently, not less urgently?

13 A It's like anything, the sooner the better. It  
14 depends on when you can get things done.

15 Q And, therefore, waiting to get an x-ray is not in  
16 the patient's best interest, is it?

17 A I think it depends on the time frame. I mean, I  
18 don't think two weeks is a problem. If it'd been  
19 two months, it might be a different problem.

20 Q Turning your attention -- I'm going to skip a page  
21 because it's just a clinical progress note  
22 indicating that the x-ray was ordered but now going  
23 to the next page is a radiology report; correct?

24 A Yes.

25 Q Now, in your practice as a family medicine

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1 physician and as a correctional medicine doctor, do  
2 you order x-rays for masses?

3 A I might.

4 Q Pardon me?

5 A Yeah, I might.

6 Q Might. I'm asking you have you done that?

7 A Oh, I'm sure I have over the years.

8 Q In your opinion, is that a test to determine what  
9 the mass is?

10 A If I'm concerned about a mass, it's not the best  
11 test. It doesn't look at soft tissue lesions as  
12 well as a CAT scan or MRI scan would.

13 Q So it would be correct to say -- correct me if I'm  
14 wrong -- that a better test would have been an MRI  
15 or a CT scan to determine what that mass was;  
16 correct?

17 MR. McQUILLAN: Objection to foundation.

18 Q Go ahead and answer.

19 A Well, I feel at some point that needs to be --  
20 obviously it's one step at a time. So you got the  
21 plain x-ray first and went from there.

22 Q I'm sorry. So you are saying the x-ray is the  
23 first test you should do. Is that your testimony?

24 A There's no -- you know, medicine is an art and a  
25 science. There's no 100 percent way you do things

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1 every time for everybody. It depends on the  
2 situation. I wasn't there at the time. I wasn't  
3 doing the examination of the person. You know, it  
4 all depends on the gut feeling of the physician or  
5 the provider at the time what he or she feels is  
6 the best thing for the patient to start the  
7 management process of the concerned area.

8 Q Are you familiar with the software system called  
9 UpToDate?

10 A Yes.

11 Q Do you use that routinely in your practice?

12 A At times. Not routinely but at times.

13 Q You're familiar with the systems in that you put in  
14 information regarding a particular set of symptoms  
15 and it gives you guidance on what you do as far as  
16 testing and followup; is that right?

17 A It does, yes. It can.

18 Q Pardon me?

19 A It can, yes.

20 Q Are you familiar with the UpToDate system as it  
21 pertains to masses found on a person's neck?

22 A No. I've not used that for that lately.

23 Q So you would not be able to testify as to whether a  
24 mass of this specific size requires a specific type  
25 of Endogen; is that correct?

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1 A No. That's correct. Yeah, I don't know exactly  
2 what UpToDate says regarding that at this point  
3 today.

4 Q And do you recollect as you sit here today what  
5 Dr. Mathis testified in that regard?

6 A I don't have his report in front of me, but I do  
7 remember him mentioning something about four  
8 centimeters or greater.

9 Q But you don't recall what type of tests should be  
10 done with what type of size of mass; correct?

11 A I don't have that in front of me. I remember him  
12 mentioning the MRI, but I don't remember the  
13 details of what was in his report.

14 Q And, therefore, you can't comment or opine with  
15 regard to his opinion on that issue; correct?

16 A Yes. Correct.

17 Q Continuing now with Exhibit 9. The next page is a  
18 provider visit dated October 23, 2013. Do you see  
19 that document?

20 A Yes.

21 Q Have you seen this before?

22 A Yes.

23 Q This is a document authored apparently by  
24 Dr. Holmes; correct?

25 A Yes.

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1 Q And he writes in part that he's -- that the  
2 patient's there for neck pain and frequency of  
3 urination; correct?

4 A Yes.

5 Q Then he says that -- I'm skipping to the next line.  
6 About the lump on his neck, that it's been there  
7 15 months ago and is getting bigger and it's not  
8 painful. Do you see an inconsistency there, that  
9 he complains of neck pain but it's not painful?

10 A Well, I see -- the patient first noticed this  
11 15 months ago. It's getting bigger and it's not  
12 painful.

13 Q Do you see earlier in the summary he's there for  
14 neck pain?

15 A Yes.

16 Q Do you see an inconsistency in this record? Yes or  
17 no?

18 A Yes.

19 Q Now, part of what Dr. Holmes notes on this report  
20 -- on the neck/thyroid exam is the size of the  
21 mass; correct?

22 A Yes.

23 Q I'm now on page 2 of his report.

24 A Yes.

25 Q Indicates it's four centimeters in diameter;

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1 correct?

2 A Yes.

3 Q Indicates it's not freely mobile; correct?

4 A Yes.

5 Q That it's rubbery in texture and is affixed to the  
6 underlying structures; correct?

7 A Yes.

8 Q Records that it's not thyroid as it does not move  
9 with thyroid gland in swallowing maneuver and it  
10 feels deep to the SCM; correct?

11 A Yes.

12 Q What does SCM stand for?

13 A Sternocleidomastoid muscle.

14 Q In your review of that entry, Doctor, do you have  
15 an opinion as to whether what Dr. Holmes charted on  
16 that date was a suspicion of a cancerous mass?

17 A In my opinion, it was suspicious. He puts in his  
18 notes down below there's a suspicious neck mass.

19 Q Do you agree with that opinion?

20 A Yes.

21 Q And you agree that that mass required further  
22 evaluation; correct?

23 A Correct.

24 Q In your mind, what is the mass suspicious for?

25 A My speculation would be that the doctor was

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1 suspicious for cancer.

2 Q Would you agree from a medical perspective that  
3 that condition was a serious condition, medical  
4 condition?

5 MR. McQUILLAN: Objection. Calls for a legal  
6 conclusion.

7 Q Go ahead and answer.

8 A Well, once again, I would say it has the potential  
9 to be a significant medical problem that needs to  
10 be evaluated, yes.

11 Q And you would agree with me given the size, the  
12 length of time, texture, all of the other  
13 descriptions that are contained in Dr. Holmes'  
14 entry of this date indicated that this be evaluated  
15 promptly; correct?

16 A Correct.

17 Q And in your mind, how prompt is promptly?

18 A Well, it's sometimes different in a correctional  
19 institution because there's processes and  
20 procedures you have to go through to get approvals  
21 and scheduling and set up to have CAT scans, MRI,  
22 whatever outside testing done. So it's not like  
23 something as simple as doing it today.

24 Q What is your answer, Doctor? How prompt is  
25 promptly?

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1 A I don't know in that actual situation in that  
2 prison how long it takes to get that scheduling  
3 done, but I would hope within a matter of a few  
4 weeks it could be done.

5 Q A matter of a few weeks would be acceptable from  
6 your standpoint. Is that your testimony?

7 A At the longest, a few weeks.

8 Q The longest is two weeks you said?

9 A No. I said within a few weeks, I would hope it  
10 could be done.

11 Q Well --

12 A Within two to three weeks, I would hope.

13 Q -- I want to be -- I want to be clear, Dr. Stoltz,  
14 on your testimony. When you say a few weeks, are  
15 you saying three weeks, 21 days?

16 A In an ideal situation, you would hope it could be  
17 done within a week, but like I said, in a  
18 correctional institution, it's not always that easy  
19 to get it done within a matter of days. Sometimes  
20 it takes several weeks to get something like this  
21 set up. I would hope within a matter of two,  
22 three, four weeks at the most it would be done.

23 Q I understand what you're saying. I appreciate your  
24 testimony. I am trying to figure out your opinions  
25 here. In what you would deem to be prompt medical

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1 care for a person with this documented mass of  
2 about four centimeters maximum in diameter and with  
3 the descriptions that is contained in the report by  
4 Dr. Holmes, you would want the CT scan done within  
5 one week, if possible; correct?

6 A In my own private practice, I would hope so. The  
7 thing is also that Dr. Holmes put him on a round of  
8 antibiotics to see if that would make any  
9 difference. If for some lucky reason, within a  
10 matter of a week, ten days, the antibiotics shrunk  
11 it down and it was gone, you don't need to proceed  
12 with further testing.

13 Q You wouldn't have waited for the antibiotic to do  
14 the CT scan in a private practice; correct?

15 A I might -- well, I might wait a week to see what it  
16 would do. It all depends on the patient. You  
17 know, if you know your patient, if it's a patient  
18 I've taken care of for 20 years, I know their  
19 reliability, I know everything, it's a lot  
20 different from somebody in a jail/prison situation.  
21 They're not your long-term patient. You don't know  
22 them necessarily, how much can you fully believe  
23 their whole story. It's speculation. A lot of  
24 this is speculation.

25 Q I'm not asking you to speculate. I'm asking you

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1 for your medical opinion on what would be  
2 appropriate in terms of promptness to get a CT scan  
3 done. What I think I heard you say is that based  
4 on your knowledge in the correctional medicine  
5 field, inmates -- it takes longer for inmates to  
6 get CT scans done. Is that what you're testifying?

7 A Typically it does.

8 Q And did you review in the context of Dr. Holmes'  
9 request for a CT scan to be ordered that -- I'm  
10 still on Exhibit 9. I apologize. I'm skipping  
11 ahead to past the end of Dr. Holmes' report after  
12 his medication orders where he ordered the  
13 Penicillin, and now I'm on the consultation  
14 request. Do you see that form?

15 A Yes.

16 Q And this is the form that Dr. Holmes sent to the  
17 Department of Corrections to get a referral;  
18 correct?

19 A Apparently so, yes.

20 Q And it's fair to say that Dr. Holmes did not make  
21 an urgent request for this CT scan; correct?

22 A Other than the fact he noted CT scan of neck to  
23 evaluate worrisome neck mass, which sometimes  
24 triggers a thought of this needs to be done quicker  
25 than average.

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1 Q Do you see that it was requested as urgent or not?

2 A I don't know where that's -- where you would put  
3 that on at. I don't know how that -- that works.

4 Q Did you see in the testimony of Dr. Holmes that he  
5 did not make his request urgently or any other  
6 requests for consultation urgently?

7 A I believe that's what he said, yes.

8 Q Do you know when the CT scan was actually  
9 performed?

10 A On 11-21-13.

11 Q And where did you find that document?

12 A Actually, it was in my report. I don't know where  
13 the document is offhand.

14 Q Okay. Before we get to the MRI or CAT scan,  
15 rather, I just want to finish up on Exhibit 9. Did  
16 you see that prior to the CAT scan being done  
17 another x-ray was performed?

18 A The one on 10-30?

19 Q Yes.

20 A Yes.

21 Q Do you have any notion of why that was ordered?

22 A Don't know. Except -- well, I could -- I could  
23 actually --

24 Q Sorry. Go ahead.

25 A No. Just one second here.

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1 Q I'm having a hard time hearing you because I think  
2 you're moving some papers.

3 A Well, the first x-ray on 10-22-13 was just a basic  
4 cervical spine x-ray that looked at the bones  
5 themselves, so to speak. But the one on 10-30 was  
6 a specific one for soft tissue of the neck, AP and  
7 lateral views, but it was looking more to see if  
8 you could see any kind of mass in the neck on plain  
9 x-rays, looking at soft tissues, whether it be a  
10 foreign body present or something else going on in  
11 the neck. I'm sure it was ordered because they  
12 wanted to make sure they could see it in the soft  
13 tissues.

14 Q Okay. Going to the next exhibit, which is 10.  
15 (Exhibit 10 was handed to the witness.)

16 A Yep.

17 Q Do you see that there's a clinical progress note  
18 dated October 30th reflecting that a 407 for the CT  
19 of the neck was sent and that x-rays were ordered?

20 A Yes.

21 Q Correct?

22 A Yes.

23 Q And I think we've already gone over this. This is  
24 another consultation form. I believe two were  
25 submitted for the CAT scan. And, again, on this

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1 Exhibit 10, page 2, the request is done routinely;  
2 correct?

3 A This is the same as the other -- same as the other  
4 form. It's not a different request.

5 Q There were two forms submitted.

6 A Oh, okay. One by the nurse and one by Dr. Holmes.

7 Q Okay. And, again, it appears to be done routinely;  
8 correct?

9 A I don't know where on this form you mark urgent or  
10 routine. I don't know if there is a special place.  
11 I don't know how their forms worked.

12 Q Based on earlier testimony of your review of the  
13 transcript in this case, Dr. Holmes testified he  
14 always done routine referrals; correct?

15 A Correct.

16 Q All right. Continuing to the next page dated  
17 November 5, 2013, and this is a health assessment.  
18 And this is -- it appears to be a review of the  
19 soft tissue neck x-ray; is that correct?

20 A Yes.

21 Q Are you there?

22 A Yes.

23 Q Okay. Do you know when Mr. -- you may have  
24 testified to this. I apologize -- Mr. Franklin  
25 actually had the CT scan performed?

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1 A I don't have the report in front of me, but it says  
2 it was scheduled on 11-21-13.

3 Q Okay. How long after was that from the time when  
4 Nurse Hearld detected the mass on the right side of  
5 his neck?

6 A About six weeks.

7 Q How long after the first x-ray that was performed  
8 did that occur?

9 A The first x-ray was on 10-22. So it was about a  
10 month later.

11 Q Now, returning -- I'm sorry. Turning to the very  
12 last page of Exhibit 10.

13 A Okay.

14 Q It indicates that the CT had occurred, right --

15 A Yes.

16 Q -- on November 22nd. Do you see what Dr. Holmes  
17 wrote after that -- I'm sorry, Dr. Carrel. Forgive  
18 me. This is an entry by Dr. Carrel. Did it say  
19 quote, I scheduled a visit next month to discuss  
20 the result, closed quote?

21 A Yes.

22 Q When did Dr. Carrel see Mr. Franklin?

23 A On December 13th, about a couple weeks later.

24 Q Twenty-three days after the CAT scan was obtained;  
25 right?

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1 A Well, Dr. Holmes saw him three days later.

2 Q Dr. Holmes saw who three days later?

3 A Well, actually, Dr. Holmes reviewed the CT report  
4 three days after it was done.

5 Q Right. But Dr. Holmes did not see Mr. Franklin  
6 then, did he?

7 A No. He actually made referrals for ENT and biopsy  
8 and started the process for further evaluation.

9 Q That wasn't my question. When was Mr. Franklin  
10 next seen to discuss the results of the CT scan?

11 A I'd have to look at other parts of the record to  
12 make sure about that.

13 Q Did you put that in your report?

14 A I said Dr. Holmes reviewed the CT on 11-25 which  
15 showed the possible neoplasty process of the neck  
16 and made a referral for ENT and biopsy. And put an  
17 ENT specialist, Dr. Greenberg, on -- he was seen on  
18 January 6th.

19 Q That wasn't my question. Did you record in your  
20 record the next time Mr. Franklin was seen  
21 following the CAT scan?

22 A I said Dr. Carrel saw Mr. Franklin on 12-13-13 for  
23 a provider visit.

24 Q Okay. So in between the time that Mr. Franklin had  
25 the CT scan done and the results were in, 23 days

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1        elapsed before he saw another doctor; is that  
2        right?

3        A    Well, yeah, it appears before he saw somebody, but  
4        he actually had things in the process of getting  
5        referrals prior to that it appears from the record.

6        Q    Can you answer my question? Is it correct that the  
7        next time Keith Franklin saw a doctor regarding the  
8        mass was on December 13, 2013, 23 days after the CT  
9        results were in? Yes or no?

10                MR. McQUILLAN: Object to foundation.

11        Q    Go ahead and answer.

12        A    That's what I have in my report.

13        Q    Is that a yes?

14        A    Yes.

15        Q    All right. If the court reporter would please hand  
16        the Exhibit 11 to the witness.

17                (Exhibit 11 was handed to the witness.)

18        Q    Have you seen Exhibit 11 before?

19        A    Yes.

20        Q    And, again, this is a -- the first two pages of  
21        this pertain to a consultation request that  
22        Dr. Holmes made for an ENT to do a biopsy of the  
23        suspicious mass of the right neck; correct?

24        A    Correct.

25        Q    Based on your review of the transcript of

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1 Dr. Holmes, he testified that this request was made  
2 routine and not urgent; correct?

3 A Correct.

4 Q The date of this ENT request was November 25, 2013;  
5 is that right?

6 A Yes.

7 Q Do you know what date the appointment with  
8 Dr. Greenberg was made?

9 A On January 6th.

10 Q Do you see it on page 2?

11 A January 6, '13.

12 Q How many days after the CT scan results were in was  
13 the appointment scheduled for Dr. Greenberg to  
14 occur?

15 A Approximately six weeks.

16 Q And that's a time frame that was approved by  
17 Dr. Holmes; is that correct?

18 A I don't know how that approval process works. I  
19 mean, he put the referral in. I don't know who  
20 schedules the appointments. I don't know how long  
21 it takes for the ENT -- to get into their office.  
22 So I don't know how long --

23 Q Let me direct your attention to page 2 of the  
24 exhibit. See where it says the appointment date  
25 and time?

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1 A Yes.

2 Q And who it's to be with. What's the last thing it  
3 says -- that appears in that sentence. Time frame  
4 approved by Dr. Holmes. Did I read that correctly?

5 A Yes.

6 Q So Dr. Holmes, at least according to this document,  
7 and I believe he testified accordingly, approved a  
8 six-week time frame for Mr. Franklin to be seen for  
9 a biopsy; correct?

10 A According to this document.

11 Q Is it your opinion, Doctor, that a six-week delay  
12 between the CAT scan results and getting a biopsy  
13 performed is acceptable?

14 MR. McQUILLAN: Objection to form and  
15 foundation.

16 Q Go ahead and answer.

17 A Well, I just base it on my experience. Even in my  
18 hometown here, to get somebody from private  
19 practice or even in -- from the jail. To see an  
20 ENT, it can take two or three months sometimes.  
21 Six weeks is probably pretty quick, honestly.  
22 They're busy. They don't put people in within two  
23 weeks when you call and set an appointment up.

24 Q So is it your testimony -- do you know anything  
25 about Jackson, Michigan?

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1 A I do not. Never been there.

2 Q Do you know anything about the patient population  
3 or the physicians that are available in Jackson,  
4 Michigan?

5 A No.

6 Q You can't testify whether six weeks is reasonable  
7 or not, can you, in Jackson, Michigan?

8 A No. I don't know.

9 Q And is it your testimony, Doctor, that you've never  
10 had a patient with a mass of this size in the neck  
11 area with all the other characteristics noted in  
12 the medical records to have an expedited biopsy  
13 done?

14 A I would love to get a biopsy done within a week,  
15 but unfortunately, it's the way the process of  
16 medicine works many places. You've got to schedule  
17 appointments. You've got to go through all the ins  
18 and outs of the processes -- the approvals. I  
19 mean, insurance even, preauthorization, the right  
20 provider is on your list, et cetera, et cetera,  
21 et cetera. It's a headache out there.

22 Q Can you answer my question? Have you ever had a  
23 patient with a neck mass that was four to five  
24 centimeters in size that had been there for  
25 approximately a year with the characteristics noted

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1 in Mr. Franklin's record get an expedited biopsy?

2 Yes or no?

3 A I don't think I've ever had the opportunity to get  
4 an expedited quick biopsy in a matter of a few  
5 weeks, no.

6 Q What's the fastest time you've had a biopsy  
7 performed on a patient with a neck mass of this  
8 size that had been present for roughly a year?

9 MR. McQUILLAN: Objection to foundation.

10 A About the only time I can get it expedited is if  
11 someone is actually admitted to the hospital and  
12 they're seen in the hospital on an urgent basis.

13 Q Is that because of the area that you reside in?

14 A I don't know. I'd be interested in calling every  
15 ENT office in your area and see how fast they could  
16 get in there. I would be surprised they could get  
17 in within two weeks unless the ENTs are not very  
18 busy there.

19 Q You'd be surprised if you could get in within two  
20 weeks?

21 A That would surprise me.

22 Q Do you know what the standard of care is in this  
23 situation in that you're not an oncologist or an  
24 ENT?

25 A I'm not an oncologist or an ENT. I mean,

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1 obviously, the sooner the better for everything.

2 Q Right. But you don't know what the standard of  
3 care is with those specialties; correct?

4 MR. McQUILLAN: Objection to form. Vague.

5 Q Go ahead and answer.

6 A Like I said, the sooner, the better for everything  
7 in a situation such as this. But in practical  
8 terms, there's a lot of other factors that go into  
9 it. Scheduling appointments, getting approvals,  
10 getting custody. This, this, this, things set up.

11 Q Would you agree with this proposition, Doctor, that  
12 inmates in the correctional facilities that you've  
13 cared for are at a disadvantage of getting prompt  
14 medical care because of all the layers that they  
15 have to go through to get approval?

16 MR. McQUILLAN: Objection. Form. Foundation.

17 Q Go ahead and answer.

18 A I would say at times there's a disadvantage. Some  
19 specialists won't see inmates or they'll put them  
20 at delayed times or whatever. They're probably at  
21 a disadvantage. So are people without insurance in  
22 the community. You can't --

23 Q You understand, Doctor, being in a correctional  
24 medicine field of expertise that inmates have a  
25 constitutional right to medical care?

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1 A Yes.

2 Q Do you understand that their constitutional right  
3 to medical care is equivalent to those people who  
4 are not incarcerated?

5 A Yes.

6 MR. McQUILLAN: Objection. Calls for a legal  
7 conclusion.

8 Q Now, I want to turn your attention, Doctor, to  
9 Exhibit 12 if the court reporter will please hand  
10 that to you.

11 (Exhibit 12 was handed to the witness.)

12 A Okay.

13 Q I want to direct your attention to the first two  
14 pages of Exhibit 12. You've seen this document  
15 before; correct? Hello?

16 A I was looking to verify.

17 Q Have you seen this before?

18 A Yes, yes, yes.

19 Q Okay. This is a medical record indicating a  
20 provider visit scheduled February 13, 2014. Does  
21 it indicate in this record in part that  
22 Mr. Franklin saw Dr. Greenberg on February 10,  
23 2014?

24 A Yes.

25 Q That was about four months after Nurse Hearld

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1       documented the mass on October 9 of 2013; correct?

2     A   Correct.

3     Q   And in your opinion, that was not a delay that  
4       constituted deliberate indifference; correct?

5               MR. McQUILLAN:  Objection.  Trying to elicit a  
6       legal conclusion and mischaracterizes the  
7       testimony.

8     Q   Go ahead and answer.

9     A   I'm not trying to make a legal conclusion on  
10       deliberate indifference.

11    Q   Do you think that getting a biopsy performed four  
12       months after a mass of this size and all the other  
13       characteristics that were noted, that meets the  
14       standard of care?

15               MR. McQUILLAN:  Objection.  Form.

16    Q   Go ahead and answer.

17    A   I would say it's not an ideal situation, but when I  
18       look at all the information involved, including  
19       weather in Michigan and the ENT cancelled  
20       appointment because their office was closed or  
21       whatever, weather delays, some things are beyond  
22       the control of the medical staff.

23    Q   Did you see anything in your review of the records,  
24       Doctor, where any physician that was treating  
25       Mr. Franklin did anything to get him in to see

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1 Dr. Greenberg in an expedited fashion? Yes or no?

2 MR. McQUILLAN: Objection to form and  
3 foundation.

4 Q Go ahead and answer.

5 A I guess what I saw in the record was the fact that  
6 they put in the request. They kept the process  
7 going to get the patient in to see the specialist  
8 for further evaluation.

9 Q Did you see anything in the records, Doctor, that  
10 either Dr. Holmes or Dr. Carrel did anything to  
11 expedite Mr. Franklin being seen by Dr. Greenberg?  
12 Yes or no?

13 A Once again, I did not see the word expedited, but  
14 they actually did make appointments. They did put  
15 in 407s. They did make sure the guy was getting in  
16 to get his care. There's things beyond their  
17 control, scheduling, custody, et cetera, weather  
18 delays that they can't control.

19 Q Did you read anything in the records or in the  
20 deposition transcripts where either Dr. Carrel or  
21 Dr. Holmes made any effort to call Dr. Greenberg or  
22 have anybody on behalf of Mr. Franklin reach out to  
23 Dr. Greenberg to get an appointment earlier than  
24 either of the two dates that were scheduled? Yes  
25 or no?

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1 MR. McQUILLAN: Objection to form.

2 Foundation.

3 Q Go ahead and answer.

4 A I do not recall seeing that, no.

5 Q Now, turning to page 2 of Exhibit 12, do you see  
6 under the neck thyroid/area "comments"?

7 A Yes.

8 Q Do you see that? Do you see it says 11 by 5  
9 centimeter R neck mass at the angle of the jaw?

10 A Yes.

11 Q Do you see that?

12 A Yes.

13 Q You understood that the first mass that was noted  
14 by Dr. Bhavsar was also at the angle of the jaw?

15 A Yes.

16 Q Do you in reading these comments believe that the  
17 mass that was documented by Nurse Hearld had grown  
18 since October of 2013?

19 A Which exhibit was that?

20 Q The ones with Nurse Hearld.

21 A Yes.

22 Q Is that what you're asking?

23 A Yes.

24 Q That would have been Exhibit 9.

25 A I don't know from her notation.

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1 Q What about from the subsequent notes from her entry  
2 to this date of February 13th of 2014, did you  
3 detect any growth from what either Dr. Holmes or  
4 Dr. Carrel had noted in their records?

5 A I believe Dr. Holmes stated it was approximately  
6 four centimeters. Here it says 11 by 5  
7 centimeters.

8 Q Would you draw a conclusion from that that the mass  
9 was growing?

10 A Yes.

11 Q Now, page 3 of Exhibit 12, you see that this is a  
12 report from Dr. Greenberg?

13 A Yes.

14 Q Did you review this as part of your opinion?

15 A Yes.

16 Q Does it indicate in part that the mass is greater  
17 than six centimeters in its greatest diameter?

18 A Yes.

19 Q Does it indicate in this report that the patient  
20 told this doctor that the mass had been present for  
21 19 to 20 months and is growing rapidly now?

22 A Yes.

23 Q If we look back in time, 19 to 20 months from  
24 February 10 of 2014, does that put that at about  
25 August of 2012?

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1 A Approximately.

2 Q With regard to the treatment or the physical  
3 findings section of this report towards the bottom  
4 of this report, do you see what the doctor said,  
5 that the findings were worrisome for a primary  
6 malignant involving the tonsil with regional spread  
7 to the lymph nodes in the right neck area? Do you  
8 see that?

9 A Which paragraph are you on? Oh, yes, I do. At the  
10 very bottom.

11 Q Do you see that?

12 A Yes.

13 Q Doctor, from a medical standpoint, Mr. Franklin  
14 suffered from a serious medical condition.

15 MR. McQUILLAN: Counsel is that a question or  
16 a statement?

17 Q I'm asking you. Was he -- I asked you, was he  
18 suffering from a serious medical condition at this  
19 point in time?

20 MR. McQUILLAN: Objection. Calls for a legal  
21 conclusion.

22 Q Go ahead and answer.

23 A Well, I'm not trying to make a legal conclusion but  
24 this is a significant medical problem.

25 Q Is there a difference in your mind between a

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1 serious medical problem and a significant medical  
2 problem?

3 A It depends on if you're trying to say from a legal  
4 perspective or from medical terminology.

5 Q I asked you from a medical perspective.

6 A From medical terminology, it's a serious problem --  
7 it's a serious medical problem.

8 Q Because it's clear that it appears Mr. Franklin  
9 likely had cancer; correct?

10 A Correct.

11 Q Turning your attention to the next page. That  
12 appears to be a form that Dr. Greenberg completed  
13 indicating the next set of tests that needed to be  
14 done; correct?

15 A Yes.

16 Q Following that, there's a chart update. That form  
17 was completed by Dr. Greenberg on February 7th,  
18 2014; correct?

19 A Yes.

20 Q The next entry that I have is chart update of  
21 February 18th of 2014, eight days later; is that  
22 right?

23 A Yes.

24 Q And that's a chart update by Dr. Carrel indicating  
25 he sent out a 407 for EGD; correct?

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1 A Yes.

2 Q And as you reviewed Dr. Carrel's testimony, this  
3 request was not made urgently; is that right?

4 A I don't recall the actual testimony on that, but I  
5 do recall that they were not sent out urgently in  
6 general.

7 Q What is an EGD?

8 A Esophagogastroduodenoscopy.

9 Q And did you understand that that was something that  
10 Dr. Greenberg requested be done?

11 A Yes.

12 Q Continuing on to the next page. There's another  
13 request for laryngoscopy and biopsy. Do you see  
14 that?

15 A Yes.

16 Q It's fair to say that you saw nothing in the  
17 records or in the testimony indicating that this  
18 request was made urgently; is that right?

19 A As far as I know, yes, you're right.

20 Q Now, turning to the next page, when was the  
21 appointment scheduled for Dr. Greenberg for the  
22 procedures to occur?

23 A 3-18-14.

24 Q How much time between the time when Dr. Greenberg  
25 issues his report on February 10, 2014, and the

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1 request for the tests on that same date elapsed  
2 before he was scheduled to see Dr. Greenberg for  
3 those procedures?

4 A A little over a month later.

5 Q A month and one week; right?

6 A Right.

7 Q Do you know when the biopsy was actually performed?

8 I can help you. We'll get to it in a second.

9 A Yeah. I don't mean have that page. I was trying  
10 to look at the page in front of me.

11 Q On March 11, 2014, which is the next entry of the  
12 chronic care visit?

13 A Correct.

14 Q Do you see under physical exam that Dr. Carrel  
15 notes that the mass was growing?

16 A Yes.

17 Q Under the neck and thyroid?

18 A Yes.

19 Q And it says it appears to be growing out and also  
20 it is more painful for him?

21 A Yes.

22 Q Do you see that? Turning to the next page, does it  
23 indicate that Mr. Franklin had just returned from  
24 the biopsy?

25 A Yes.

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1 Q Continuing -- if we can mark Exhibit 13 now.

2 (Exhibit 13 was handed to the witness.)

3 MS. REPORTER: Can we take a short break?

4 MS. STAMLER: Sure. Absolutely.

5 (A brief recess was taken.)

6 Q Doctor, do you have Exhibit 13 in front of you?

7 A Yes.

8 Q Okay. Thirteen is the March 19, 2014, provider  
9 visit unscheduled; is that right?

10 A Correct.

11 Q That's the first two pages anyway. This is his  
12 followup to an off site visit with the ENT where a  
13 biopsy of his tonsils had been performed and the  
14 path was pending; correct?

15 A Yes.

16 Q In his report, he indicates that the ENT told him  
17 that this was cancer but the path report was  
18 pending; is that right?

19 A Yes.

20 Q And then on -- continuing to the next chart update,  
21 which is March 25, 2014, this was a chart update  
22 that was done by Dr. Carrel; is that right?

23 A Yes.

24 Q And immediately behind that is the report from  
25 Dr. Greenberg dated March 20, 2014; correct?

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1 A Yes.

2 Q And looking to both the chart update, which appears  
3 to mirror in part Dr. Greenberg's report, it  
4 indicates that Mr. Franklin has squamous cell  
5 carcinoma involving the right tonsil with regional  
6 spread to the right neck area; is that right?

7 A Yes.

8 Q It's fair to say that Mr. Franklin as of March 20,  
9 2014, was diagnosed with cancer; correct?

10 A Correct.

11 Q The diagnosis was of the right tonsil with regional  
12 spread to the right neck area; correct?

13 A Yes.

14 Q You understand what it means when it says spread to  
15 the right neck, is that in the lymph nodes?

16 A I believe that's what they're referring to, yes.

17 Q Fair to say from your medical --

18 A I'm not an oncologist or -- I don't have --

19 Q No, no, no. I understand. I'm not asking you  
20 that. I'm about to ask you a different question.

21 A Okay.

22 Q You would agree with me on March 20, 2014, the  
23 diagnosis that Mr. Franklin received was from a  
24 medical opinion a serious medical condition?

25 MR. McQUILLAN: Objection. Calls for a legal

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1 conclusion.

2 Q Go ahead and answer.

3 A I would -- from a medical perspective, not legal, I  
4 would say it does constitute definitely a serious  
5 medical problem.

6 Q Now, from the date that Mr. Franklin was diagnosed  
7 with the squamous cell carcinoma involving the  
8 right tonsil and the regional spread to the right  
9 neck area, when did he first start chemotherapy?

10 A I don't have the date. I believe it was not until  
11 June.

12 Q Pardon me?

13 A He was admitted on June 16th of '14.

14 Q The chemo began June 19, 2014. Do you have any  
15 reason to dispute that?

16 A No. I actually have in my note he was admitted for  
17 chemotherapy on June 16th and he started it on  
18 June 19th.

19 Q Right. And the reason he didn't start sooner was  
20 in part because he needed more testing; right?

21 A Right. A PET scan.

22 Q Do you know when the PET scan was originally  
23 scheduled to occur?

24 A I know he had to be rescheduled due to some  
25 security issues. I don't have it right in front of

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1 me what the original date was. On June 9th, he had  
2 to have -- it was noted by the nurse it had to be  
3 rescheduled due to security issues.

4 Q Did you read Dr. Kolvalski's medical records and  
5 her deposition in this case?

6 A I did.

7 Q Do you recall, Dr. Stoltz, that Dr. Kolvalski  
8 indicated that first seeing Mr. Franklin on  
9 April 7, 2014, she wanted chemotherapy to begin  
10 within three weeks, which would have been  
11 April 28th; is that right?

12 A I don't have her record in front of me to verify  
13 that.

14 Q So you don't recall one way or the other?

15 A I don't right offhand, no.

16 Q You would agree with me the sooner that  
17 Mr. Franklin received chemotherapy given his  
18 diagnosis as of March 20, 2014, the better his  
19 prognosis?

20 A Honestly, I'm not an oncologist and the stage of  
21 his cancer at that point, I don't know if it would  
22 make any difference really prognostically or not.  
23 So I can't answer that.

24 Q You did read Dr. Levin's testimony in that regard;  
25 correct?

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1 A I did read it, but I don't have it right in front  
2 of me right now.

3 Q You're not rendering an opinion on that one way or  
4 the other; correct?

5 A Like I said, I'm not a specialist from that  
6 category, so I would let them give those opinions.

7 Q Let me take a look now at Exhibit 14, please.

8 (Exhibit 14 was handed to the witness.)

9 A Okay.

10 Q Do you see the first page is a clinical progress  
11 note?

12 A Yes.

13 Q And on April 7, 2014, Dr. Kolvalski had indicated  
14 that Mr. Franklin needs an MRI with dye and  
15 radiation oncology. Do you see that?

16 A Yes.

17 Q On the next page April 8th, 2014, Mr. Franklin is  
18 seen for an unscheduled visit; correct?

19 A Yes.

20 Q Do you know where this provider obtained a  
21 diagnosis date of April 8, 2014?

22 A I don't know where that came from, no.

23 Q That would not be in keeping with what  
24 Dr. Greenberg's record says of March 20, 2014;  
25 correct?

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1 A Correct.

2 Q Continuing to the next -- skipping forward to the  
3 consultation request that was made for the MRI  
4 three pages from the back of this exhibit.

5 MR. McQUILLAN: Patti, if your copy has MDOC  
6 Bates numbers, maybe you could read those off just  
7 to make sure that we're talking about the same  
8 thing.

9 MS. STAMLER: Sure. MDOC 0194.

10 A Okay.

11 Q On April 7, 2014, Dr. Kolvalski requested that an  
12 MRI be ordered. When was the appointment actually  
13 scheduled for Mr. Franklin to have the MRI?

14 A I see an appointment 4-16-14.

15 Q This is literally a month after Dr. Greenberg had  
16 diagnosed the cancer; is that right?

17 A One moment.

18 Q Sir, did you answer?

19 A I was looking at something.

20 MR. McQUILLAN: He's reviewing the exhibits.

21 A But yes, it was about that long after, yes.

22 Q Continuing on the next page, I'm now on MDOC 184  
23 and 185. That's a chronic care visit dated April  
24 14, 2014. Have you seen this document before?

25 A Yes.

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1 Q And this is a -- these are notes prepared by  
2 Dr. Carrel; is that correct?

3 A Yes.

4 Q And Dr. Carrel writes his findings on the neck and  
5 thyroid; is that right?

6 A Yes.

7 Q Would it appear to you from this entry that the  
8 masses are growing?

9 A Yes.

10 Q Continue to Exhibit 15, please.

11 (Exhibit 15 was marked for identification.)

12 Q First page is a chart update dated 4-17-14 that's  
13 authored by Dr. Carrel indicating in part that he  
14 sent out a note to cancel the 407 for radiology  
15 nuclear medicine because it was the wrong service.  
16 Did I read that correctly?

17 A That's what it says, yes.

18 Q Continuing to the second page of this exhibit.

19 It's a chart update from the same date of 4-17-14.  
20 And he is comparing the MRI and the CT scan;  
21 correct?

22 A Yes.

23 Q And did you detect in reading through Dr. Carrel --  
24 I'm sorry, the ENT's entry on this date that the  
25 masses that were found on Mr. Franklin's neck were

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1 growing?

2 A Yes.

3 Q Continuing to the next page. This is 4-29-14.

4 This is a chart update dated April 29 indicating  
5 that Mr. Franklin had returned from an off site  
6 appointment on 4-25-14. Clearly this is a late  
7 entry; correct?

8 A Right. Four days later.

9 Q Right. And in this chart entry, Dr. Carrel  
10 indicates that he sent out a request for a PET-CT  
11 to occur in May; is that right?

12 A Yes.

13 Q And if you turn to the next page -- again, I know  
14 you don't have the records necessarily in front of  
15 you that are complete, but you do recollect that  
16 Dr. Carrel did not request that this PET scan be  
17 done urgently; is that right?

18 A From what the testimony was, yes.

19 Q And the first PET scan appointment was scheduled  
20 for May 19th, 2014; is that right?

21 A Yes.

22 Q How many months after the initial diagnosis with  
23 cancer was that PET scan scheduled to occur?

24 A Two.

25 Q Pardon me?

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1 A Two.

2 Q Continuing to the next page is a chart update dated  
3 April 30, 2014, with a followup appointment in  
4 May and June scheduled which were inadvertently  
5 combined and so they were reordered. Do you know  
6 what this is in reference to?

7 A Yeah. I think there was a 407 -- actually, I don't  
8 have it in front of me right now to know exactly  
9 what the combination was.

10 Q Okay.

11 A So I guess I'd say no, I'm not 100 percent sure.

12 Q Do you know whether that caused a delay in his  
13 getting tested or treated?

14 A I don't know 100 percent.

15 Q Turning to the next page is a form entitled Nurse  
16 Protocol. Are you on that page?

17 A Yes, yes.

18 Q This is dated 5-19-2014, and this is in reference  
19 to the PET scan being cancelled; correct?

20 A Yes.

21 Q Did you see below where it says "assessment:  
22 knowledge deficit"?

23 A Yes.

24 Q Do you know what that means?

25 A Well, I presume from reading the objective

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1 information above that he didn't have the proper --  
2 he was told how to prep and what to eat and what  
3 not to eat, and he did not follow all the  
4 recommendations. Thus, they're saying he had  
5 knowledge deficit of proper prep. So it wasn't  
6 done at that time.

7 Q Continuing to the next page, it's a clinical  
8 progress note from May 19, 2014. Did you note that  
9 part of the reason his PET scan was rescheduled is  
10 because he arrived late?

11 A That's what it says as well as not following --

12 Q Do you know who has -- pardon me?

13 A As well as it says not following prep guidelines.

14 Q Right. I said in part because he arrived late;  
15 correct?

16 A Right.

17 Q Tardiness is not within Mr. Franklin's control, is  
18 it?

19 A No, nor is it the provider's either.

20 Q Well, it's under the -- whose fault is it if he's  
21 late to an appointment?

22 A Custody.

23 Q Whose fault is it if a patient isn't informed of an  
24 appointment?

25 A That could be anybody working there.

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1 Q The person who informs him; right?

2 A Correct.

3 Q One of the hallmarks of giving medical care in a  
4 prison is to make sure that the prisoner doesn't  
5 know that he or she is being taken off site because  
6 of security reasons; correct?

7 A Yes.

8 Q They could have stayed; correct?

9 A Yes.

10 Q Turning to Exhibit 16.

11 (Exhibit 16 was handed to the court reporter.)

12 Q First page is a chronic care visit dated May 21,  
13 2014.

14 A Yes.

15 Q As of this date, Mr. Franklin still has not had the  
16 PET scan; is that right?

17 A Correct.

18 Q Did you notice that in reading this chronic care  
19 visit report that Mr. Franklin's cancer is getting  
20 worse and his range of motion has decreased?

21 A Yes.

22 Q Did you understand in reading these records from  
23 May 21, 2014, in the preceding visits that he had  
24 that Mr. Franklin was in substantial pain?

25 A Yes.

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1 Q Continuing to the next page to the Kite Response  
2 dated June 6th, do you see here that it appears  
3 that Melinda Johnston told Mr. Franklin's mother  
4 about his scheduled PET scan?

5 A I don't see where she said that she told the mother  
6 that. I apologize.

7 Q Do you see under detail where it says PET scan  
8 rescheduled due to family member and patient again  
9 aware of the date?

10 A Yes.

11 Q It doesn't indicate how they learned that; right?

12 A Right.

13 Q Do you know who Dr. Drakovich is?

14 A No.

15 Q Did you read any documents related to any report  
16 that Dr. Drakovich prepared?

17 A Actually, I do not believe so, no.

18 Q Now, are you familiar enough with the effects  
19 chemotherapy has on a cancer patient as it relates  
20 to their becoming more susceptible infection  
21 following chemotherapy? Do you know anything about  
22 that?

23 A Yes, a little bit.

24 Q Is it fair to say that cancer patients who get  
25 chemotherapy are susceptible to infection and

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1 sepsis?

2 A Yes.

3 Q And you would agree with me that sepsis is a  
4 serious medical condition?

5 MR. McQUILLAN: Objection. Calls for a legal  
6 conclusion.

7 Q Doctor, do you understand sepsis from a medical  
8 perspective is a serious medical condition?

9 MR. McQUILLAN: Same objection.

10 Q Go ahead and answer.

11 A From a medical perspective, sepsis can be very  
12 serious.

13 Q Do you have any knowledge, Doctor, as to what step  
14 or steps should be taken with an individual who is  
15 getting chemotherapy to guard against sepsis?

16 A Well, unfortunately, you can't prevent it  
17 100 percent, but you obviously want to check the  
18 blood counts, check to make -- if they have a  
19 fever, how they're feeling, and see if there's any  
20 significant change in their condition.

21 Q Would you monitor their vital signs such as  
22 shortness of breath, chest pain, things like that?

23 A That could be part of it, yes.

24 Q What about dehydration?

25 A It could eventually be part of that.

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1 Q What about low blood pressure?

2 A That could be a sign of -- it can go along with  
3 sepsis.

4 Q So understanding that you can monitor those sorts  
5 of physical symptoms, are there any medications to  
6 your knowledge that can be prescribed to guard  
7 against dehydration following chemotherapy?

8 A I'm not so -- I mean, it depends on the situation.  
9 If you're nauseous, you're vomiting, you treat with  
10 medication, and if you're not drinking fluids, you  
11 encourage fluids. You may put in IV fluids, those  
12 type of things.

13 Q Are there any medications you're aware of that are  
14 used to prevent nausea and vomiting in a  
15 chemotherapy patient?

16 A Yes.

17 Q Do those include Compazine and Zofran?

18 A Yes.

19 Q And are you aware that upon discharge from McLaren  
20 Hospital, Mr. Franklin had various prescriptions  
21 ordered --

22 A Yes.

23 Q -- by the doctor discharging him?

24 A Yes.

25 Q Did you understand that two of the prescriptions

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1        were Compazine and Zofran?

2        A    Yes.

3        Q    Did you understand upon his return to Carson City  
4        Hospital that Compazine was not filled and was not  
5        given to him?

6        A    Yes.

7        Q    Do you understand that Compazine and Zofran treat  
8        aspects of both conditions and work differently?

9        A    They work differently, but the bottom line is to  
10       help control nausea and vomiting.

11       Q    Did you see anything in the August 7, 2012, record  
12       where Dr. Bhavsar indicated the palpable lymph node  
13       was a lipoma?

14       A    I do not believe so, no.

15       Q    What is the distinction between a lipoma and a  
16       palpable lymph node?

17       A    Well, just by palpating, you may not be able to  
18       tell the difference. You may have to -- only be  
19       able to tell with a biopsy or incision of biopsy.

20       Q    Do you have any expertise in staging, diagnosing,  
21       or treating tonsillar cancer?

22       A    No.

23       Q    Did you read Dr. Kolvalski's discharge summary for  
24       Mr. Franklin?

25       A    I did.

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1 Q And did you read that Dr. Kolvalski indicated that  
2 Mr. Franklin should be placed at Duane Waters?

3 A I did see a mention of that.

4 Q Did you read her testimony regarding that?

5 A I did, but I don't recall exactly the wording. I  
6 don't have it in front of me.

7 Q But did you take into consideration the statements  
8 that she made during her testimony about why she --  
9 her discharge summary stated that Mr. Franklin  
10 should be placed at Duane Waters Hospital?

11 A I don't remember her exact comments.

12 Q Do you recall that she recommended he be placed  
13 there rather than the general prison population so  
14 he could be properly monitored?

15 A I recall something to that degree, yes.

16 Q Do you remember anything about her testimony in  
17 that regard?

18 A Not in detail right now, no.

19 Q Do you think that Mr. Franklin would have had  
20 better monitoring had he been at Duane Waters  
21 Hospital versus being returned to the general  
22 prison population?

23 A I would hope so.

24 Q And that is because Duane Waters Hospital is a  
25 hospital where there's medical personnel monitoring

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1 patients; correct?

2 A Correct.

3 Q In the general prison system, you don't have  
4 ongoing monitoring of the prisons. They get  
5 medical care if they're called out for an  
6 appointment or if they seek sick call; correct?

7 MR. McQUILLAN: Object to foundation.

8 Q Go ahead and answer.

9 A Well, it depends. Most prisons have an infirmary  
10 where they take people discharged from the  
11 hospital, put them in a more closely observed area  
12 until they're stable or released by the provider to  
13 go back to the general population.

14 Q Did Mr. Franklin get placed into an infirmary  
15 setting upon his return from chemotherapy?

16 A I don't know.

17 Q Well, did you see any record indicating that he was  
18 placed in the infirmary upon his return to the  
19 prison?

20 A I don't recall where he was actually placed.

21 Q Would that make a difference in your opinion?

22 MR. McQUILLAN: Objection. Form. Which  
23 opinion?

24 Q Any opinion in this case.

25 A Not in my overall opinion of the care or, you know,

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1 the intentional not taking care of him, referring  
2 him, et cetera, that we talked about earlier.

3 Q So upon his discharge from McLaren Hospital, you  
4 would have expected him to be placed in an  
5 infirmary for monitoring; correct?

6 A Well, I -- I don't know how -- the condition he was  
7 in at the time. Obviously, even in my note here,  
8 when he came back to the facility, he stated he  
9 felt better than he did prior to leaving the  
10 facility. So obviously he wasn't in terrible  
11 distress the day he came back to the DOC. So it  
12 all depends on the situation --

13 Q Did he -- sorry. Go ahead.

14 A I said it all depends on the situation at the time.

15 Q So you don't -- do you have an opinion one way or  
16 the other as to whether he should have had closer  
17 monitoring upon his return from chemotherapy? Yes  
18 or no?

19 A Well, retrospectively, you can say all kind of  
20 things, but, you know, like I said, most --

21 Q That's all we can do here.

22 A Of course.

23 Q I'm saying retrospectively.

24 A In most prisons I go to, like I said, when they  
25 come out of a hospital for surgery or whatever

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1        else, they tend to put in a medical holding area or  
2        some kind of more closer observation until they're  
3        released or sent back to G.P. by the providers. I  
4        don't know what their policy is up there at the  
5        DOC.

6        Q Did you read Dr. Bomber's testimony regarding the  
7        way they now handle cancer patients who are getting  
8        chemotherapy upon discharge from chemotherapy?

9        A I don't recall if I saw that or not.

10       Q You don't recall that Dr. Bomber testified that  
11       after June of 2014, after Mr. Franklin's death,  
12       that the policy now is to place individuals at  
13       Duane Waters Hospital following discharge from  
14       chemotherapy?

15       A I don't recall what he said, no.

16       Q Turning your attention to Exhibit 17.

17                    (Exhibit 17 was marked for identification.)

18       A Okay.

19       Q Page one of Exhibit 17 is a case -- inpatient case  
20       management note from the Department of Corrections.  
21       It's a clinical note from Ingham Regional Medical  
22       Center - McLaren where Mr. Franklin was receiving  
23       chemotherapy. Do you see the entry dated June 23,  
24       2014, that he was receiving around-the-clock  
25       alternating Compazine and Reglan for nausea and

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1 vomiting?

2 A Improving, yes.

3 Q I want to turn your attention to the next page,  
4 which is a Nurse Protocol. On this form, it  
5 indicates all the medications that Mr. Franklin is  
6 receiving. Do you see that?

7 A Yes.

8 Q Do you see anywhere on that medication list drugs  
9 Compazine or generic equivalent?

10 A No.

11 Q Turning to page -- the third page of this exhibit  
12 which is MDOC28, Nurse Protocol form.

13 A Yes.

14 Q Now, Mr. Franklin returned from chemotherapy on  
15 June 24; is that correct?

16 A Yes. Discharged on 6-23-14.

17 Q 23-14?

18 A Page one.

19 Q Thank you. So he was discharged back to Carson  
20 City Hospital -- or Carson City Correctional  
21 Facility on the 23rd of June, 2014; is that right?

22 A From the note, yes.

23 Q And when is the first time he was seen by a medical  
24 person after his return?

25 A The nursing note is on 6-27-14.

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1 Q Is that four days later?

2 A Apparently.

3 Q Is that right?

4 A It appears to be that way.

5 Q And do you see what his blood pressures are on  
6 June 27, 2014, beginning with the first entry at  
7 9:26 a.m.?

8 A Yes.

9 Q 70 over 45; is that right? Is that hypotensive?  
10 Hello?

11 A Yes.

12 Q I didn't hear your answer.

13 A Yes.

14 Q It is hypotensive?

15 A Yes.

16 Q Are all of the blood pressures that are recorded on  
17 6-27 beginning at 9:26 and concluding at 1:15 p.m.  
18 indicative of hypotension?

19 A I don't know what his baseline blood pressure was  
20 when he was in the hospital, but it could be.

21 Q Did you see that based upon what was happening, he  
22 was having nausea, vomiting, and diarrhea for four  
23 days --

24 A Yes.

25 Q -- post chemotherapy?

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1 A Yes.

2 Q He's dehydrated; correct?

3 A Good possibility, yes.

4 Q Well, doesn't the medical records show he was

5 dehydrated?

6 A It suggests that.

7 Q How soon after Mr. Franklin was seen by the nurse

8 was a doctor contacted?

9 A At 9:26 a.m., there's a note Dr. Carrel was

10 informed of the patient's condition. Will do

11 verbal orders and start IV fluids.

12 Q So 9:26 a.m. and you're on page Bates 27 -- MDOC27;

13 is that right?

14 A I'm on 0029.

15 Q 0029? I'm on 0027 where it says SOAP Note.

16 A Okay.

17 Q Are you on that page?

18 A Yeah. I'm on that -- I guess it kind of correlates

19 with 0029 as well.

20 Q Okay. Well, I want you to turn to 0027.

21 A Okay. Yeah, it's the same -- same note. Anyway --

22 yeah.

23 Q All right. This SOAP Note -- what does SOAP stand

24 for?

25 A Subjective, objective, assessment, and plan.

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1 Q And this was prepared by Dr. -- I'm sorry, Nurse  
2 Newhall?

3 A Yes.

4 Q Is that correct?

5 A Yes.

6 Q And this indicates that the nurse was contacted by  
7 the unit officer; is that right?

8 A Yes.

9 Q And apparently Mr. Franklin was complaining that  
10 his tongue felt like it was swelling. What does  
11 that indicate to you, Doctor?

12 A That's hard to know. That's subjective from his  
13 standpoint. So I don't know what -- I can't say.

14 Q What about the complaint of pain with talking and  
15 swallowing?

16 A What about it?

17 Q What does that indicate?

18 A He could have swelling in his throat from his  
19 cancer, from his tonsils.

20 Q On the objective section, it says, MP notified of  
21 BP. Do you know what that means?

22 A Medical providers notified of blood pressure.

23 Q Did you see in the prior note that we were looking  
24 at that the nurse was deeming Mr. Franklin's  
25 condition to be emergent? Hello?

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1 A Well, I'm just looking. I don't know where -- what  
2 do you see on the note it talks about emergent?

3 Q On the page -- on the page -- two pages before  
4 this, the nurse protocol, does it indicate anywhere  
5 on that form that it was urgent or emergent?

6 A Not that I see.

7 Q How about the next page? There's two pages. If  
8 you continue on the nurse protocol, page two, does  
9 it say emergent/urgent right below his blood  
10 pressure result?

11 A Yeah, under low blood pressure, there's a line that  
12 says emergent/urgent. I don't know what that line  
13 means.

14 Q Would you say that a person who has got a blood  
15 pressure of 70 over 45, has been vomiting for four  
16 days and has just completed chemotherapy for cancer  
17 is reviewed as somebody with potential sepsis and  
18 be treated emergently?

19 MR. McQUILLAN: Objection to form.

20 A I don't know -- sepsis could be a consideration,  
21 but obviously this could be dehydration from not  
22 being able to take fluids in. Nausea, vomiting,  
23 diarrhea doesn't necessarily mean sepsis.

24 Q Did you see that his pharynx and uvula were swollen  
25 and had white patches?

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1 A Yes.

2 Q Is that in your mind a sign of infection or not?

3 A It could be. He could have thrush.

4 Q Can thrush turn into sepsis?

5 A Uncommonly, but I never say never. It could.

6 Q Do you think that on June 27, 2014, at 9:26 a.m.

7 Mr. Franklin was in urgent or emergent need of  
8 medical attention?

9 A I'd say yes.

10 Q And do you know that there was a hospital within  
11 two miles of the prison that treated prisoners  
12 called the Carson City Hospital?

13 MR. McQUILLAN: Objection to foundation.

14 A Yeah. I don't --

15 Q Can you answer?

16 A I don't know that for a fact, but I know that IV  
17 fluids were started, which is something you want --  
18 that's what you would do. You would urgently get  
19 IV fluids going on somebody dehydrated and  
20 hypotensive, which was done by Dr. Carrel's orders.

21 Q Did I ask you that question?

22 MR. McQUILLAN: Objection. Argumentative.

23 Q I want an answer to my question. Did you read any  
24 medical records in your review of this case showing  
25 that Mr. Franklin had previously received medical

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1 attention at the Carson City Hospital? Yes or no?

2 A Previously received -- I don't know. Not that I  
3 recall.

4 Q Do you recall reading any testimony in this case  
5 from any of the witnesses, expert or otherwise,  
6 regarding the fact that there was a hospital within  
7 approximately two miles of the prison where  
8 prisoners were treated? Yes or no?

9 MR. McQUILLAN: Object to foundation.

10 A I do remember -- recall reading something to that  
11 degree, yes.

12 Q Do you know whether Mr. Franklin was taken to the  
13 closest hospital from the prison to treat his  
14 urgent/emergent medical needs?

15 A Like I said previously, they acted right there at  
16 the prison starting IV fluids, which is the first  
17 thing you would do anyway. So they got things  
18 begun there. And then from what I understand, he  
19 was transferred to the Duane Waters -- he was  
20 stabilized there and sent to Duane Waters for  
21 further care.

22 Q Do you know if Mr. Franklin received emergent  
23 medical attention at the closest hospital to the  
24 prison? Yes or no?

25 MR. McQUILLAN: Object to foundation.

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1 A I don't know for sure.

2 Q And do you know, sir, whether Mr. Franklin was  
3 transported by ambulance or by van from the prison  
4 to Duane Waters Hospital?

5 MR. McQUILLAN: Objection. Form. Vague. A  
6 van could be an ambulance. I don't know. Maybe  
7 you want to rephrase your question.

8 Q Well, a non-ambulance van versus an ambulance, do  
9 you know, sir, how he was transported to Duane  
10 Waters Hospital?

11 A I don't have that record in front of me, but I do  
12 have in my report on June 27th at 1:24 p.m. Nurse  
13 Bush noted that he was in a wheelchair ready to be  
14 transferred. He had no complaints at the time of  
15 his departure.

16 Q I didn't ask you that. Do you know how he was  
17 transported, sir? Yes or no?

18 A I don't know the exact method of transportation,  
19 no.

20 Q Were you provided with a transfer blog from the  
21 defense attorney in this case?

22 A I don't recall that.

23 Q It's not listed in your documents that you reviewed  
24 in rendering your opinion; is that right?

25 A Yeah, I don't recall that at all, no.

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1 Q Would you agree with me that treating sepsis  
2 emergently increases the patient's chance of  
3 survival? Yes or no?

4 A Yes.

5 Q Do you know how long between the time when  
6 Dr. Carrel first saw Mr. Franklin being 9:26 a.m.  
7 on June 27th to when he actually got to Duane  
8 Waters Hospital, do you know how much time elapsed?

9 MR. McQUILLAN: Objection to form.

10 Q Go ahead and answer.

11 A My notes and my report says at 4:47 p.m., PA Longer  
12 noted that Mr. Franklin ambulated into the ER  
13 without difficulty, and he was stable. He was  
14 given IV fluids and seemed to be doing better.

15 Q So he got to Duane Waters Hospital at what time?

16 A I don't have the exact arrival time. I just  
17 note -- a note by the PA there said 4:47 p.m. that  
18 he -- Mr. Franklin ambulated into the ER without  
19 difficulty and was stable.

20 Q How much time elapsed between when Dr. Carrel saw  
21 Mr. Franklin and when he was supposedly ambulating  
22 in the ER in Duane Waters Hospital?

23 A I have a note here on 0026, it says Dr. Carrel  
24 documented -- a document generated at 11:57 a.m.

25 Q You testified earlier he saw Mr. Franklin at 9:26

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1 a.m. Didn't you say that?

2 A I said the IV fluids -- actually, I said that the  
3 nurse notified him at 9:26 a.m.

4 Q So two hours elapsed between the time of when the  
5 nurse notified Dr. Carrel and Dr. Carrel actually  
6 saw Mr. Franklin. Is that your testimony?

7 MR. McQUILLAN: Object to foundation.

8 A If you look at Bates Number 0025, that's what it  
9 says, 11:26 a.m. provider visit per Dr. Carrel.

10 Q Two hours went by; is that correct?

11 A Yes.

12 Q And then he did not get to Duane Waters until --  
13 the notation in the ER was what time? 4:00?

14 A Around 4:00 p.m.

15 Q So almost another five -- four and a half hours  
16 later; is that right?

17 A Appears to be, yes.

18 Q Someone with sepsis going that long without  
19 antibiotics could cause death, couldn't it?

20 MR. McQUILLAN: Object to form, vague.

21 Q Go ahead and answer.

22 A Well, when I look at the record, there was not a --  
23 I mean, there was not the thought of sepsis at the  
24 time. He was actually -- Dr. Carrel's note -- I  
25 mean, yeah, Dr. Carrel's note here, the guy was

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1        talking. He was stable. His blood pressure  
2        apparently had improved. So there wasn't the grave  
3        sepsis opinion or appearance of the patient at that  
4        point.

5        Q Let me ask my question again, Doctor, and listen  
6        carefully. Someone who has sepsis with the delay  
7        of treatment of antibiotics from 9:26 a.m. until  
8        4:00 p.m. could cause someone's death; correct?

9                MR. McQUILLAN: Objection to form.  
10       Mischaracterizes the evidence and asked and  
11       answered.

12       Q Answer my question.

13       A I'd say it's pure speculation.

14       Q Therefore, you can't answer that; is that correct?

15       A Correct.

16       Q Did you read a late entry that was prepared  
17       by (inaudible)?

18                MS. REPORTER: I'm sorry. Could you repeat  
19       that?

20                MR. McQUILLAN: Patti, you kind of broke up in  
21       between words there. Could you try restating that  
22       one more time?

23       Q Sure. I'm moving on to the next Exhibit 18. Can  
24       you find that?

25

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1 (Exhibit 18 was marked for identification.)

2 A Yes.

3 Q Page 1 of 18 is a clinical progress note; correct?

4 A Yes.

5 Q It indicates that Mr. Franklin died on June 29th,  
6 2014; is that right?

7 A Yes.

8 Q Do you know what his cause of death was?

9 A I believe sepsis.

10 Q Did you read an autopsy report related to  
11 Mr. Franklin?

12 A I did.

13 Q Do you recall that his cause of death was neck  
14 cancer and complications thereof?

15 A Yes.

16 Q And is it your view that Mr. Franklin's death from  
17 sepsis was not preventable?

18 A I have no comment on that. It's speculation.

19 Q You have no opinion on that one way or the other;  
20 is that right?

21 A Correct.

22 Q Okay. On page 2 of Exhibit 18 -- did you ever see  
23 Jeremy McMullen's name in any medical record that  
24 you reviewed prior to this late entry?

25 A I don't believe so.

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1 Q Do you know who he is?

2 A I don't know him personally. He's a nurse  
3 according to this form here.

4 Q Do you know if he ever even had contact with  
5 Mr. Franklin?

6 A I don't know.

7 Q Do you know that this late entry was made the day  
8 after Mr. Franklin was dead?

9 A It says on June 30th, 2014.

10 Q That was the day after Mr. Franklin had died;  
11 correct?

12 A Correct.

13 Q Did you use this late entry in formulating your  
14 opinion?

15 A No.

16 Q You did not? Is that what you just testified, you  
17 did not use it in formulating your opinion?

18 A It actually has no bearing really on my opinion.

19 Q I'm sorry, Doctor. I did not understand what you  
20 just said. Could you please repeat that?

21 A I said I likely reviewed it but it had no bearing  
22 on my opinions.

23 Q Did it stand out to you as odd to see an addendum  
24 to a medical record placed in a medical record the  
25 day after somebody died?

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1 A I see late entries quite often when I go out and do  
2 audits or surveys of jails and prisons. If it was  
3 something that was totally out of place in the late  
4 entry, I would be questioning what's going on.

5 Q Well, do you see late entries in cases that you've  
6 done surveys on where the patient is already dead?

7 A Yes. Yeah, it's pretty common, actually. They'll  
8 make anyone involved in the case put in a late  
9 entry to summarize the events that occurred at a  
10 jail or prison.

11 Q Well, these summaries -- the summary of events  
12 pertain to events that happened six days prior to  
13 this entry.

14 A Correct.

15 Q And that in your mind is completely -- is the norm;  
16 is that right?

17 A I'd say it's not in the norm, no.

18 Q Now, I want to turn your attention to Exhibit 19 to  
19 your deposition, and I'm going to represent on the  
20 record that it's the autopsy reports to Franklin.

21 (Exhibit 19 was handed to the witness.)

22 A Yes.

23 Q And it's got numbers at the lower right-hand side  
24 starting with A many zeros and then 1 and continues  
25 on all the way to number seven is the last page?

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1 A Yes.

2 Q Do you see where it says cause of death, sir?

3 A Yes.

4 Q And it says neck cancer and complications thereof;  
5 is that correct?

6 A Yes.

7 Q Is that what it says?

8 A Yes.

9 Q Do you agree or disagree with this statement, that  
10 a new neck mass is a relatively common head and  
11 neck problem that patients present to doctors?

12 A It's a relatively common problem.

13 Q So you would agree with that?

14 A Yes.

15 Q You agree that new neck masses often have no  
16 associated symptoms other than recognition of a new  
17 lump noted incidentally on palpation?

18 A Yes.

19 Q You agree that a mass may be the only manifestation  
20 of a serious and potentially malignant pathology  
21 especially in the adult population?

22 MR. McQUILLAN: Objection to form and  
23 foundation.

24 A That's always a possibility.

25 Q Go ahead and answer.

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1 A That's always a possibility.

2 Q You agree that a doctor's failure to properly  
3 document the characteristics of a lymph node mass  
4 can be deliberately indifferent?

5 MR. McQUILLAN: Objection to form, foundation,  
6 and calls for legal conclusion.

7 Q Go ahead and answer.

8 A Once again, it calls for a legal conclusion, which  
9 I'm not here to do.

10 Q Do you think what a doctor says to properly  
11 document characteristics of a lymph node mass can  
12 violate the standard of care?

13 MR. McQUILLAN: Form and foundation.

14 Q Go ahead and answer.

15 A I do think it's important you should document size  
16 and characteristics of any lump of any nodes,  
17 whether it be the neck, legs, arms, the head,  
18 anywhere.

19 Q Do you think it's ever proper to ignore a mass on a  
20 lymph node that has been palpated and is  
21 questionable?

22 MR. McQUILLAN: Objection to form.

23 Q Go ahead and answer.

24 A My comment would be I don't think it's appropriate  
25 to avoid any kind of lump anywhere on the body that

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1 someone has and presents to you and it's new. But  
2 to clarify that, you actually sometimes will -- I  
3 mean, I frequently tell the patient, this is  
4 probably nothing to worry about. If it enlarges or  
5 it changes or it's not gone in a couple weeks or a  
6 month, I want to see you back. So you put the onus  
7 on the patient to followup many times. I don't see  
8 everyone back that has a lump here and there.

9 Q You would put the onus on the patient. Is that  
10 your testimony?

11 A I frequently do, yes.

12 Q Do you change that whether the patient is a  
13 prisoner versus a non-prisoner?

14 A No.

15 Q Just give me a minute. I'm looking through my  
16 notes. Give me one second. I'm getting close. We  
17 can go off the record for a minute. Let me just  
18 look at my notes.

19 (A brief recess was taken.)

20 Q I want to go back to your report, Doctor, which was  
21 Exhibit 2 to the deposition. I'm now on your  
22 section of the report labeled discussion and  
23 conclusion.

24 MR. MCQUILLAN: Just a second. We're finding  
25 the exhibit. We've got a lot of paper here.

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1 MS. STAMLER: That's okay. Let me know when  
2 you get to it.

3 A Which page?

4 Q I'm on page 5 of your report section five,  
5 Discussion and Conclusions?

6 A Okay.

7 Q Your first opinion is stated in paragraph one;  
8 correct?

9 A Yes.

10 Q What specific facts do you rely on in formulating  
11 your first opinion?

12 A Well, I put I strongly oppose the claim the medical  
13 providers deliberately delayed the evaluation and  
14 treatment of Mr. Franklin.

15 MS. REPORTER: Could you slow down?

16 THE WITNESS: Oh, sorry.

17 A I put I strongly oppose the claim that the medical  
18 providers deliberately delayed evaluation and  
19 treatment of Mr. Franklin. And I base that on --

20 Q Sorry. Go ahead.

21 A I base that on --

22 Q And what facts did you rely on for the opinion?

23 A The facts I relied was the fact that when I follow  
24 the sequence of events, the providers saw this  
25 person on a regular basis. They put in 407s to get

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1 things done. There was progress along the way.  
2 There was never an intentional delay. There was  
3 never -- obviously there's many factors that go  
4 into timing of events, such that we mentioned  
5 previously, security, weather, right preparation  
6 for different things, seeing specialists, getting  
7 reports back, et cetera, et cetera, et cetera. But  
8 the providers themselves at the institution put in  
9 requests for the x-rays, put in requests for  
10 referrals for specialists. It wasn't like they  
11 intentionally said, no, we're not going to send you  
12 to an oncologist or to whatever. That's what I  
13 based my opinion on.

14 Q So is that -- those are the facts that you're  
15 pointing to; is that correct?

16 A That's correct.

17 Q With regard to your use of the term strongly  
18 opposed and earlier in that paragraph opposed, it  
19 sounds to me as if you're advocating for a specific  
20 opinion; is that correct?

21 MR. McQUILLAN: Objection to form.

22 Q Go ahead and answer.

23 A I'm just stating that I strongly oppose the claim  
24 that the providers intentionally delayed progress  
25 on the care of this patient.

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1 Q Do you understand, and if you don't you can tell  
2 me, whether a provider in a correctional medicine  
3 situation can be held responsible under the law for  
4 the delay even though it's not necessarily  
5 intentional but rather reckless?

6 MR. McQUILLAN: Objection. Calls for a legal  
7 conclusion, and I think I'm going to instruct my  
8 client not to answer that. That is not a good  
9 question, Patti.

10 Q Go ahead and answer.

11 MS. STAMLER: You can't instruct him not to  
12 answer. You know that, Kevin.

13 A I have no opinion on that.

14 Q What's that?

15 A I have no opinion on that.

16 Q With regard to your second opinion, where is that  
17 located in your discussion and conclusions?

18 A What are you referring to?

19 Q Pardon me?

20 A I'm not sure what you're referring to.

21 Q Is there a second opinion that you proffer in your  
22 report or is that the sum and substance of your  
23 report in terms of your opinion?

24 A I was reading my report here for a moment.

25 Q Do you have any other opinions, Doctor, other than

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1 what you've just read into the record?

2 A Well, I think that summarizes my general overall  
3 opinion. The other paragraphs supplement that but  
4 I think that's my overall opinion.

5 Q I want to go to page 6 of your report, paragraph  
6 that begins with "The general standard of care for  
7 evaluation and management of someone with this  
8 rather poor prognosis"... Do you see that  
9 sentence?

10 A Yes.

11 Q Sir, do you have expertise to render that opinion?

12 A It was my opinion from my perspective things were  
13 evaluated and managed appropriately by the  
14 individuals working at the prison.

15 Q Let me ask you the question again. I'm focusing  
16 now on the specific sentence that you wrote, "The  
17 general standard of care for evaluation and  
18 management of someone with this rather poor  
19 prognosis cancer at the stage of initial evaluation  
20 in October of 2013 was followed appropriately with  
21 requests to needed testing and specialty referrals  
22 as well as specialists' treatment."

23 Are you testifying as an expert on the  
24 evaluation and management of cancer?

25 A No. Maybe it's misunderstood here. I'm talking

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1 about the folks that work at the prison. Their  
2 management and evaluation and plan of someone -- is  
3 who I'm referring to. I'm not referring to the  
4 actual management by the ENT or the oncologist or  
5 the radiation therapist. I'm not an expert in  
6 those areas at all.

7 Q And how do you know what his prognosis was on  
8 October of 2013?

9 A I don't know what his exact prognosis was. Like I  
10 said, I'm not an oncologist or radiation therapist.

11 Q When you wrote in your report this rather poor  
12 prognosis cancer at the stage of the initial  
13 evaluation October 2013, you can't really support  
14 that statement, can you?

15 A Well, it was my opinion it was probably a rather  
16 poor prognosis even at that stage, but like I said,  
17 I'm not an expert to give you the details of all  
18 the prognostic indicators of that type of cancer,  
19 no.

20 Q And when you reference in your report on page 5  
21 that there was a plan of care for this -- for  
22 Mr. Franklin, did you ever see a plan of care for  
23 the palpable lymph node detected on August 7, 2012?

24 MR. McQUILLAN: Objection. Form. Foundation.

25 Q Go ahead and answer.

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1 A Well, once again, that would be all speculation,  
2 but I could speculate and from Mr. Bhavsar's  
3 testimony that he felt that it was benign and he  
4 felt that it was resolved by the time he was  
5 released from there, and so you would not make a  
6 plan -- you would not have a plan of care for  
7 something like that. If you felt it was benign in  
8 the first place, you may have told the patient, if  
9 it's not resolved in a couple weeks, come back and  
10 see me. I don't know what he told him.

11 Q You're speculating, aren't you?

12 A Absolutely. You have to speculate on something  
13 like that.

14 Q And in reading Dr. Bhavsar's testimony -- do you  
15 have his transcript in front of you by chance? Did  
16 you bring it with you to your deposition?

17 A It's on the flash drive.

18 Q You testified that he had no independent  
19 recollection of Keith Franklin; correct?

20 A Yes.

21 Q And he testified that he had no independent  
22 recollection of ever touching his neck on  
23 August 21st, 2012; correct?

24 A Yes.

25 Q And he testified that he did not write a plan

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1 regarding the lymph node on August 7, 2012;

2 correct?

3 A Correct.

4 Q You stated on page 6 towards the end of the second  
5 to last paragraph, "Sepsis can occur after

6 chemotherapy without much warning and can carry a  
7 poor prognosis, especially in a cancer patient."

8 Sir, what do you base that on?

9 A What do I base that on?

10 Q Yes. Do you have any peer review literature that  
11 states that?

12 A Well, it's well known in medicine. You're taught  
13 that in medical school and residency training.

14 I've seen it many times in patients. I've taken  
15 care of many cancer patients through the years that  
16 you see that. Unfortunately, their immune system  
17 is compromised, and they get sepsis no matter what  
18 you do. You can't reverse it many times.

19 Q How many patients with the type of cancer that  
20 Mr. Franklin had with his age and his other medical  
21 conditions died from sepsis following chemotherapy?  
22 Do you have any specifics on that, Doctor?

23 MR. McQUILLAN: I'm sorry. Are you asking in  
24 the whole world or in Dr. Stoltz's experience?

25 Q I'm asking for statistics. Do you have any

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1 statistics as to how many patients with the type of  
2 cancer that Mr. Franklin had at his age with his  
3 medical condition died from sepsis following  
4 chemotherapy?

5 MR. McQUILLAN: Objection to form and  
6 foundation.

7 A I don't know.

8 Q Go ahead and answer.

9 A I don't know.

10 Q You can't give an opinion on the fact that it's  
11 rare or not rare; is that right?

12 MR. McQUILLAN: Form and foundation.

13 A I don't have an opinion.

14 Q Dr. Stoltz, did you -- I'm sorry. Did you have an  
15 answer?

16 A I don't have an opinion.

17 Q Did you see the opinions that were proffered in  
18 this case by the experts as to the percentage of  
19 individuals that had died from sepsis following  
20 chemotherapy with this type of cancer and with  
21 Mr. Franklin's age?

22 MR. McQUILLAN: Objection to form and  
23 foundation. What experts?

24 Q Did you see any testimony in that regard, Doctor?  
25 Yes or no?

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1 MR. McQUILLAN: Same objection.

2 A And I don't recall.

3 Q Therefore, you cannot quarrel with the notion that  
4 under 5 percent of individuals receiving  
5 chemotherapy for this type of cancer died from  
6 sepsis?

7 MR. McQUILLAN: Form and foundation.

8 Q Dr. Stoltz, do you have an opinion?

9 A I don't have an opinion.

10 Q So when you said that sepsis can occur after  
11 chemotherapy without much warning, how many times  
12 in your experience has that happened?

13 A Well, I cannot give you an exact number, but I  
14 spent a lot of time up on the cancer units at  
15 Indiana University Hospital, and it was fairly  
16 frequent at that time.

17 Q What time period was that, sir?

18 A Back in probably 1983.

19 Q There has been improvements, haven't there been,  
20 sir, since 1983 with Malasta (phonetic) and  
21 Nutrigen (phonetic) and other drugs to guard  
22 against that?

23 MR. McQUILLAN: Form and foundation.

24 Q Go ahead and answer. Do you know?

25 A Well, I would say there's a lot of factors that go

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1       into it. If you have terminal cancer and you're on  
2       chemotherapy, it depends what chemotherapy drug is  
3       being used. There's a lot of factors that can  
4       suppress your immune system. So I really can't  
5       give you any professional opinion on that.

6       Q The fact of the matter is your statement was based  
7       upon your experience from 1983; is that right?

8       A That was a big experience I had, but I've had other  
9       patients myself, nursing home patients, other  
10      patients that have been, you know, immunosuppressed  
11      and that's -- many times they die from sepsis.

12               MR. McQUILLAN: Anything else, Patti?

13               MS. STAMLER: I'm looking. Just give me one  
14      moment.

15      Q Isn't your opinion, Dr. Stoltz, premised upon the  
16      retrospective look at the medical records and other  
17      documents you reviewed in preparing your report?

18      A My opinion was based on the review of the records I  
19      had placed in the report.

20      Q Isn't it a retrospective view of what transpired?

21      A Well, yes.

22      Q Yes or no?

23      A Yes.

24               MS. STAMLER: I don't have any further  
25      questions subject to John's questions.

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1 MR. McQUILLAN: Go ahead, John.

2 EXAMINATION

3 QUESTIONS BY MR. THURBER

4 Q Doctor, my name is John Thurber. I introduced  
5 myself at the beginning of the deposition, I  
6 believe. And I represent Dr. Daniel Heyns who is  
7 the former director of the Michigan Department of  
8 Corrections. In the report that you authored, did  
9 you offer or are you offering any sort of opinion  
10 as to the policy of the Michigan Department of  
11 Corrections and how health care is administered  
12 through those policies?

13 A No.

14 Q Do you know Mr. Heyns at all?

15 A No.

16 Q And are you offering any expertise or expert  
17 opinion as to his performance as the director of  
18 the Department of Corrections as it relates to  
19 providing health care to prisoners?

20 A No.

21 MS. STAMLER: Thank you, Doctor. I don't have  
22 any questions -- any more questions.

23 MR. McQUILLAN: Nothing from me.

24 (The deposition concluded at 5:37 p.m.)

25

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1	UNITED STATES DISTRICT COURT	
2	EASTERN DISTRICT OF MICHIGAN	
3	SOUTHERN DIVISION	
4		
5	KAREN FRANKLIN, as Personal	)
6	Representative of the	)
7	ESTATE OF KEITH FRANKLIN,	)
8	Deceased,	)
9		) Cause No.
10	Plaintiff,	) 2:16-CV-13587
11		)
12	-v-	)
13		)
14	STATE OF MICHIGAN, et al.,	)
15		)
16	Defendants.	)

12 The deposition of RANDALL STOLTZ, M.D., taken  
13 in the above-captioned matter, on July 19, 2018, and at  
14 the time and place set out on the title page hereof.

15 It was requested that the deposition be  
16 transcribed by the reporter and that same be  
17 reduced to typewritten form.

18 It was agreed that the reading and signature  
19 by the deponent to the deposition were waived  
20 on behalf of the parties Plaintiff and Defendants  
21 by their respective counsel, the witness being  
22 present and consenting thereto, the deposition  
23 to be read with the same force and effect as if  
24 signed by said deponent.

25

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1 STATE OF INDIANA )

2 )

3 COUNTY OF VANDERBURGH )

4

5 I, Elizabeth A. Taylor, RPR, a Notary Public  
6 in and for said county and state, do hereby certify  
7 that the deponent herein, RANDALL STOLTZ, M.D., was by  
8 me first duly sworn to tell the truth, the whole  
9 truth, and nothing but the truth in the aforementioned  
10 matter;

11 That the foregoing deposition was taken on  
12 behalf of the Plaintiff; that said deposition was  
13 taken at the time and place heretofore mentioned  
14 between 12:00 p.m. and 5:37 p.m.;

15 That said deposition was taken down in  
16 stenograph notes and afterwards reduced to typewriting  
17 under my direction; and that the typewritten  
18 transcript is a true record of the testimony given by  
19 said deponent;

20 And that the reading and signature by the  
21 deponent to the deposition were waived on behalf of  
22 the parties Plaintiff and Defendants by their  
23 respective counsel, the witness being present and  
24 consenting thereto, the deposition to be read with the  
25 same force and effect as if signed by said deponent.

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1 I do further certify that I am a disinterested  
2 person in this cause of action; that I am not a  
3 relative of the attorneys for any of the parties.

4 IN WITNESS WHEREOF, I have hereunto set my  
5 hand and affixed my notarial seal this 30th day of  
6 July, 2018.

7

8

9

10

11

\_\_\_\_\_  
Elizabeth A. Taylor, RPR

12

Notary Public - State of Indiana  
My Commission Expires - 08-14-2023

13

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